



To: All Louisiana Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: July 9, 2024
Bulletin No.: LA 2024-02
Subject: 2024 Louisiana Legislative Session

The 2024 Regular Legislative Session ended June 3. This was a busy session with a significant number of new bills enacted that could impact the title insurance business. We've highlighted some here. Unless otherwise specified, the new laws take effect August 1.

INSURANCE PRODUCERS

ACT 14 (HB 75) – This law amends R.S. 22:513 and the academic qualifications required for individual title insurance producers. A college degree is now acceptable in lieu of a high school diploma.

ACT 111 (HB 257) – This act establishes a 30-day period for producers and insurers to respond to a Department of Insurance directive regarding a consumer complaint before being subject to a \$250 fine. The fine increases to \$500 after 60 days and to \$1,000 after 75 days.

ENCUMBRANCES

ACT 363 (SB 506) – This law enacts R.S. 51:1429 effective May 28, 2024. It makes it a deceptive and unfair trade practice to record a “real estate service agreement”, where a real estate broker or other person pays compensation to a property owner for the right to list and sell residential immovable property. It also prohibits the recording of a mortgage or lien given to secure such agreement. This act is similar to ALTA's [Non-Title Recorded Agreements for Personal Services \(NTRAPS\)](#) model legislation and laws adopted in other states.

Under the new law, any obligation arising out of these agreements is strictly personal and not effective or enforceable against third parties. It further provides that a mortgage purporting to secure this obligation is absolutely null, and authorizes an interested person to petition for a writ of mandamus directing the clerk to cancel such a mortgage, lien or agreement. Importantly, this statute does not apply to a lien for a broker's commission on the sale of commercial property.

Practice Point: Because the law is not retroactive, you should continue to require releases of any real estate service agreements or related mortgages recorded prior to May 28. If the filer/mortgagee is uncooperative or unresponsive, you may also accept a court order directing the clerk to cancel one of these encumbrances. We think it is unlikely that new agreements will be filed in light of this legislation.

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ACT 383 (HB 580) – This LLTA-sponsored bill also took effect May 28. It amends R.S. 9:5715 and enacts R.S. 9:5175.1 providing for bankruptcy-related releases. The act maintains the existing law authorizing a person to file an affidavit to partially release a pre-bankruptcy judgment as to property acquired post-bankruptcy discharge. But it expands the procedure for obtaining a partial release following a “free and clear” sale where the bankruptcy court order does not specify the encumbrances to be cancelled. Under the prior law, only the bankruptcy trustee or the trustee’s attorney could file an affidavit and request for cancellation following a “free and clear” sale. The revised law permits any Louisiana-licensed attorney to execute the affidavit and sets forth the required information, including a statement that the lienholder was provided notice of the bankruptcy court order.

Practice Point: A title exam must include a review of the bankruptcy court pleadings whenever a transaction involves a bankruptcy court order to sell or a partial release under R.S. 9:5175 or 57171.1.

SMALL SUCCESSIONS

ACT 90 (SB 32) – This bill, a product of the Law Institute, revises the small succession articles in the Code of Civil Procedure. Since the last revision, there has been some confusion about the use of affidavits for testate small successions. The new changes clarify that a small succession affidavit may not be used if a Louisiana-domiciled decedent died testate and left immovable property. It also imposes special requirements for a small succession affidavit for a Louisiana-domiciled decedent who died testate leaving movable property only.

Notably, the act eliminates the 90-day waiting period for filing a small succession affidavit and the requirement to attach a death certificate. However, it now requires that locatable heirs not signing the small succession affidavit be provided 30 days written notice, up from 10 days under prior law. It also expressly authorizes a curator for an interdicted heir to execute the affidavit without court authorization.

CIVIL PROCEDURE

ACT 371 (HB 227) – Also on recommendation from the Law Institute, this act provides for mostly technical corrections to the Code of Civil Procedure. Of note, it expressly authorizes pleadings to be signed electronically and a final accounting in a succession to be served by commercial carrier.

ACT 129 (HB 100) – This act revises Code of Civil Procedure Art. 4844, removing the jurisdictional amounts for evictions in city and parish courts.

ACT 183 (HB 21) – this law amends Code of Civil Procedure Art. 5094 to define “reasonable diligence” required of an attorney appointed to represent an absentee defendant. Under the revised article, an attorney is deemed to have acted with reasonable diligence in communicating with the defendant when she sends a letter by certified mail or commercial carrier to the last known address of the absentee notifying the absentee of the appointment.

ACT 423 (HB 315) -- This act, which takes effect January 1, 2025, extends prescription for delictual actions, including damage to immovable property, from one year to two years. It applies prospectively only.

RESTRICTIONS

ACT 184 (HB 23) – This law amends Civil Code Art. 781, which provides for a two-year prescriptive period to seek injunctive relief or damages for a noticeable violation of a building restriction. The act deems a violation noticeable when an apparent activity has occurred on the immovable in violation of the

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restriction, and establishes that the recordation of an instrument that provides for a violation does not constitute a noticeable violation.

ACT 158 (SB 23) – This is another Law Institute bill and provides for a comprehensive revision of what was called the Louisiana Homeowners Association Act and is now called the Louisiana Planned Community Act in R.S. 9:1141.1 *et seq.* It applies to new planned communities whose declarations are filed on or after January 1, 2025, and applies in part to existing planned communities effective January 1, 2026. Of note for title purposes, the new law provides for the automatic transfer of ownership of the common areas to the community association upon filing the new declaration without the need for a separate conveyance instrument.

Among other highlights, the law requires the clerk of court to index the declaration and amendments in the names of the declarant, the planned community, the association and any affected lot owners; requires the community name to include “planned community”; requires that the declaration be amended when lots are subdivided or lot lines adjusted; and requires a minimum two-thirds vote to terminate the planned community or to mortgage common areas.

Also of note, the act prohibits the addition of new property to the planned community after seven years from the initial declaration filing; provides for a one-year prescriptive period to challenge an amendment after it is filed; authorizes the association to suspend rights and privileges of delinquent lot owners; and allows for the collection of a reasonable fee to provide copies of association records.

FOREIGN ADVERSARIES

ACT 420 (HB 238) – This bill enacts R.S. 3:3613-19 and prohibits foreign adversaries and juridical entities in which they have a controlling interest from owning or leasing agricultural land. It follows the enactment of a broader foreign adversary law last year. See WFG Informational Bulletin LA 2023-07. Like the existing law in Title 9, this act has significant protections for innocent third parties, including mortgagees and co-owners. It also provides 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 protections in this law, WFG will not at this time require purchasers to execute a special affidavit certifying that they are not foreign adversaries nor prohibited foreign actors. However, if you become aware that a party is subject to the statute or encounter a *lis pendens* filed by the attorney general’s office, contact underwriting counsel for guidance and approval.

FACTORY-BUILT HOME

ACT 287 (SB 63) – Also a product of the Law Institute and another major revision, this act updates the Manufactured Home Property Act with the Factory-Built Home Property Act in R.S. 9:1149.1 *et seq.* A “factory-built home” is defined to include a mobile, manufactured (built to HUD standards and bears HUD seal) or modular home (built to International Residential Code standards). By doing so, the law clarifies that a modular home, like a traditional mobile or manufactured home, remains classified as a movable unless it is immobilized. The act also changes the law on immobilizations and deimmobilizations, requiring a “declaration” by the owner filed in the conveyance records. An authentic act is no longer required, and a declaration of immobilization can no longer be filed with a mortgage in the mortgage records.

Practice Point: Be sure to require an immobilization for a modular home. Although no longer required, an authentic act is still preferred and should be used for immobilizations whenever possible.

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E-FILING

ACT 694 (HB 380) – In its original form, this bill would have directed the Louisiana Clerks' Remote Access Authority (LCRAA) to develop a statewide integrated electronic filing system implemented by each clerk no later than January 1, 2026. In the final version, the parish clerks retained authority to develop, implement and operate electronic filing systems in their respective jurisdictions, but with the requirement to facilitate access through LCRAA's statewide portal. Beginning January 1, 2026, attorneys will be required to efile all civil and criminal pleadings. The act clarifies that the electronic record maintained by the clerk is deemed the official record. It also requires that original documents or exhibits transmitted to the clerk or retained by the filer must be maintained through the pendency of the proceeding until a judgment is final, unless otherwise provided by law or ordered by the court.

ACT 501 (SB 75) – This act also addresses record retention. It requires that the clerk retain an original probated testament in perpetuity. It also requires the clerk to maintain conveyance records in perpetuity.

TAX SALES

ACT 774 (SB 505)/ACT 409 (SB 119) – This pair of bills provides for a major overhaul of the laws dealing with the collection of delinquent property taxes. These changes will take effect January 1, 2026, if the constitutional amendment proposed in Act 409 is approved by voters this December. If approved, Louisiana will move from a tax sale to a tax lien model for tax periods beginning on or after January 1, 2026. We intend to provide much more information about the changes and their impact on insuring tax titles after the vote in December and well before the new law takes effect. For now, please note that the existing laws and underwriting guidelines apply to all prior and new tax sales. Insuring tax sale title requires underwriting review and approval.

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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