



To: All Maryland Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: May 29, 2020
Bulletin No.: MD 2020-07
Subject: Maryland’s Automatic Subordination Law and HB314 Amendments

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I. BACKGROUND:

Maryland is one of two states (the other being the Commonwealth of Virginia) that have enacted legislation providing for the automatic subordination of certain “junior liens”. The automatic subordination law (hereinafter “ASL”) originally went into effect on October 1, 2013.

Maryland House Bill 314 (“HB314”), enacted following the 2020 legislative session, takes effect on June 1, 2020. The workings of the ASL, as amended by HB314, are discussed below.

II. JUNIOR LIENS THAT CANNOT BE AUTOMATICALLY SUBORDINATED:

The ASL applies only to residential “junior liens”, a term which includes deeds of trust (“DOTs”) or mortgages that are not in first lien position. Junior liens (i.e., the liens that are intended to be subordinated) cannot include the following:

1. DOTs or mortgages secured by commercial property;
2. DOTs or mortgages that are in subordinate position to a first deed of trust as the result of a recorded subordination agreement;
3. Refinances of second mortgages;
4. Refinances of a first and second mortgage;
5. UCC-1 Financing Statements, liens, judgments, or agreements other than DOTs and mortgages.
6. HB 314 provides an additional exception for junior liens “securing a loan having a 0% interest rate made by a state or local agency”. **Note: Despite the wording of HB314, WFG requires written underwriter approval to automatically underwrite government-issued deeds of trust or mortgages, in any dollar amount.**

III. JUNIOR LIENS THAT MAY BE AUTOMATICALLY SUBORDINATED:

Except as provided above, junior liens may be automatically subordinated, but only under the following circumstances:

1. The property secured by the new loan must be residential property improved by four or fewer single-family dwelling units that are designed principally and are intended for human habitation, MD Real Property §7–112(a)(5).

2. The borrower must refinance the full amount of the debt secured by the existing first lien, §7-112(a)(5).
3. The interest rate on the new loan must be lower than the interest rate secured by the refinanced loan, §7-112(a)(5).
4. The principal amount secured by the junior lien does not exceed \$150,000, §7-112(b)(1).
5. The principal amount secured by the refinance mortgage does not exceed the unpaid outstanding principal balance secured by the first mortgage or deed of trust plus an amount not exceeding \$5,000 to pay closing costs and escrow costs, §7-112(b)(2).
6. The new mortgage or deed of trust must include the following printed language in bold or capitalized letters, usually printed on the top of the first page of the new instrument:

This is a refinance of a deed of trust/mortgage/other security instrument recorded among the land records of _____ county/city, Maryland in liber no. ____, folio ____, in the original principal amount of _____, and with the unpaid outstanding principal balance of _____. The interest rate provided for in the evidence of indebtedness secured by this refinance mortgage is lower than the applicable interest rate provided for in the evidence of indebtedness secured by the deed of trust/mortgage/other security instrument being refinanced.

7. All junior deeds of trust should be listed in the title commitment with a note attached as follows:
"Subordinate to the lien of the deed of trust insured hereunder by virtue of Maryland Real Property §7-112."

IV. ADDITIONAL THINGS TO BE VERY CAREFUL ABOUT:

- As to the \$5,000 requirement in paragraph III.5. above, the statute does not define what "closing and escrow costs" are. Please consult with your underwriter if these amounts arguably approach \$5,000 for your transaction.

- When dealing with adjustable-rate loans (meaning either the first DOT or mortgage that is being paid off, or the new refinance mortgage), it can be extremely difficult to know if you are complying with the requirement in paragraph III.3, above. **Note: As a general rule, WFG does not recommend using the ASL where either loan has an adjustable rate feature.**

- The first mortgage needs to be paid in full. The ASL statute does not apply if that does not happen.

For additional information, please contact Ned Livornese, Maryland underwriter, at nlivornese@wfgnationaltitle.com or 443-286-5964, or John Micciche, Maryland Agency Manager, at jmicciche@wfgnationaltitle.com or 410-913-1884.

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