To: All Maryland Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: October 7, 2020
Bulletin No.: MD 2020-09
Subject: Front Foot Benefits in Maryland

Front foot benefits (FFBs) are fees assessed against real property by private developers who pay for and install water and sewer infrastructure for new housing developments.

FFBs affect many, but not all, Maryland housing developments created in the last few decades. FFB developers impose their fees by means of an agreement with a local government or water/sanitary district that permits them to charge an annual assessment against each affected property until development costs are repaid. In the event a property owner does not pay the annual assessment, a FFB lien may be imposed upon the property.

Although FFBs are sometimes charged to the homeowner on their annual tax bill, yearly FFB invoices are commonly sent to homeowners without showing up elsewhere. In either scenario, the developer will record a declaration that sets forth the exact annual assessment for each property, as well as the length of time for which the assessment will be charged. Twenty to forty-year repayment terms are common, and charges can amount to $400-$800 per year per property.

Until recently, there was no standard legal guidance as to exactly how FFB liens could be imposed and collected. Some FFB declarations provide that liens for unpaid FFBs automatically arise from the wording of the declaration itself, and are superior to subsequently recorded mortgages or deeds of trust. Other declarations have been interpreted to create liens which follow the procedures of the Maryland Contact Lien Act (MCLA), as found in MD Real Property § 14-201, et seq. (note: The MCLA is the same law used to impose and collect liens used by homeowners associations and condominium associations).

Fortunately, in Select Portfolio Servicing, Inc. v. Saddlebrook West Utility Company, LLC, et al., No. 71, September Term 2016 (filed on August 16, 2017), the Maryland Court of Appeals held that a party seeking to establish and enforce an FFB lien must follow procedures set forth in the MCLA. The resulting FFB lien has priority as of the date a statement of lien is recorded in the land records. The

Select Portfolio Servicing case is important because it puts to rest any argument that FFB declarations are superior to subsequently-recorded mortgages or deeds of trust.

THE DANGER OF PERFORMING SETTLEMENTS ON PROPERTIES WITH FFBs:

FFB declarations are easily missed in the abstract review process, and can sometimes be confused with regular CCRs (covenants, conditions and restrictions) affecting the subdivision. Failure to review FFB documents carefully can lead to closings wherein past-due FFBs are neither collected from the seller, nor pro-rated with the new buyer. This can result in the buyer receiving a yearly invoice from the utility company for FFBs that the buyer was not aware of.

WFG has experienced a handful of such claims over the past few years. The claim loss arises in two ways. First, the seller may have not have paid prior assessments, and no demand was requested at the close of the sale transaction. Second, after the close the buyer receives the annual statement and refuses to pay the FFBs and requests that all future payments be covered until paid in full. Claim amounts can easily reach into five-figure dollar amounts in such cases. Although WFG has a good argument that the buyer is the beneficiary of FFB improvements, and that WFG therefore should not be liable for future FFB charges, such arguments may result in litigation that exceeds the costs of the FFB charges over time.

It is imperative that all WFG agents doing business in Maryland become acquainted with the concept of FFBs, and carefully review all documents provided by the title searcher or abstractor for their financial effect on each settlement. Failure to recognize a FFB declaration can result in a claim which eventually gets charged back to the agency that performed the settlement.

For additional information about FFBs or any other Maryland underwriting matter, please consult with Ned Livornese, Maryland Underwriter, at nlivornese@wfgnationaltitle.com, 443-286-5964, or John Micciche, Maryland Agency Manager, at jmicciche@wfgnationaltitle.com, 410-913-1884.

The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.