

WFG Underwriting Bulletin



To: All Michigan Policy Issuing Agents of WFG National Title Insurance Company

From: WFG Underwriting Department

Date: January 8, 2019

Bulletin No.: MI 2019-01 (Certificate of Trust)

Subject: Changes to the Michigan Certificate of Trust Statutes and Procedures

Please be advised that the Michigan's Governor Snyder signed House Bills HB-5362 and HB-5398 (now together, PA 491 of 2018) into law on December 24, 2018, both being given immediate effect. These two bills have significantly changed the statutes our industry has relied upon regarding Certificates of Trust, and should resolve the heretofore competing provisions of MCL 565.431 and MCL 700.7913.

HB-5398 eliminates the Certificate of Trust Existence and Authority provisions of PA 133 of 1991 (MCL 565.431 et seq.), replacing it with a *Certificate of Trust*, as provided in the Michigan Trust Code section of the Estates and Protected Individuals Code (EPIC). A trustee may now furnish a certificate of trust under MCL 700.7913 (as amended by HB-5362), in affidavit form, required to contain the following:

- The name of the trust, the date of the trust, and the date of each operative trust instrument.
- The name and address of each current trustee.
- The powers of the trustee relating to the purposes for which the certificate of trust is offered.
- The revocability or irrevocability of the trust and the identity of any person holding the power to revoke the trust.
- The authority of co-trustees to sign on behalf of the trust or otherwise authenticate on behalf of the trust and whether all or less than all co-trustees are required to exercise the trustee powers.
- A statement that the trust has not been revoked, modified or amended in any manner that would cause the representations included in the certificate of trust to be incorrect.

While not required by the statute, it is recommended as a best practice that the certificate of trust include the legal description of the affected real property. One other significant change is that the certificate of trust may now be signed or otherwise authenticated by the settlor, ANY TRUSTEE (including a successor trustee), or an attorney for the settlor or the trustee.

A person that acts in reliance on a certificate of trust, without knowledge that the representations included therein are incorrect, is not liable to any person for so acting, and may assume, without inquiry, as to the existence of the trust and other facts included in the certificate of trust. Further, a person that in good faith enters into a transaction in reliance on a certificate of trust may enforce the transaction against the trust property as if the representations included in the certificate of trust were correct.

If there are any questions, please contact the WFG Michigan Underwriters, Allan Dick at (248-533-6450), alland@wfgnationaltitle.com or Kim O'Connor at (616-265-2830), koconnor@wfgnationaltitle.com.

NOTE: The information contained in this Bulletin is intended solely for the use of employees of WFG National Title Insurance Company, its title insurance agents and approved attorneys. Disclosure to any other person is expressly prohibited unless approved in writing by the WFG National Title Insurance Company's Underwriting Department.

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