

WFG Underwriting Bulletin



To: All Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: October 20, 2020
Bulletin No.: NB 2020-15
Subject: Assignments of Sales Contracts Prior to Closing

Recently, we have been getting questions from agents concerning properties that are being “flipped” by purchasers assigning, for a fee, contracts of sale which those purchasers have executed with the property owner/seller. The scenario typically is:

1. Purchaser X enters into a contract with property owner Z for sales price “A.” The contract will contain a provision to the effect that it may be assigned by the purchaser; it may also contain a phrase like “in the purchaser’s sole discretion.” Some contracts disclose that Purchaser X may make a profit by assigning it.
2. Purchaser X then assigns the contract to a third party, Buyer Y, for a sales price “B.” The assignment to buyer Y will be for the consideration of a fee to Purchaser X, which fee may be substantial—in some cases, as much as 50% of the original contract sales price.

Most of the questions and issues are beyond the scope of our agency agreement. That said, these transactions are fertile ground for persons with nefarious intent and must be carefully scrutinized. Following are our guidelines if you are asked to close one of these assignment of contract deals:

- Ideally, even if the original contract allows it to be assigned in the purchaser’s sole discretion, we want the seller also to execute the assignment to avoid a potential suit attacking the transaction as somehow fraudulent. (For example, the seller may be desperate to sell and is unknowingly induced to enter into a contract without being aware of the property’s true fair market value.) The assignment should recite the “fee” being paid to the assignor/original purchaser.
- If the transaction is a “short sale,” the short sale lender must be provided the contract and assignment in advance of closing and must consent in writing.
- If the assignee buyer is getting a loan to acquire the property, the new lender must also be provided the contract and assignment in advance of closing and must consent in writing.

As mentioned above, there are several tangential matters that are beyond the scope of our agency agreement and ability to advise agents. These include, but are not limited to, for example:

- The Closing Disclosure or HUD-1 should list the seller and the contract assignee as the parties. The sales price should be the consideration in the original contract, and the assignment fee should be listed as a line-item charge to the assignee. The identity of the payee of the assignment fee must also be listed in the line-item.
- The original contract of sale may not comply with state law regarding terms, disclosures, etc.;
- The original contract purchaser/assignor may be considered a realtor or in the real estate business under state law;
- We are unable to determine definitively if the assignment fee is subject to IRS1099 reporting.

Agents are encouraged to consult their agency's attorneys and/or tax professionals for answers to these and other similar questions that may arise during these transactions.

NOTE: This Bulletin is for the sole purpose of establishing underwriting positions and policies reflecting WFG National Title Insurance Company's best business judgment. 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.