

WFG Informational Bulletin

To: All Policy Issuing Agents of WFG National Title Insurance Company and WFG Staff
From: WFG Underwriting Department
Date: December 28, 2022
Bulletin No: NB 2022-15
Subject: Lessons Learned from Claims (and other avoidable reasons we and our agents have had to write checks)

We hate claims, not because we hate to write checks – that’s the business we’re in as an insurer. We hate claims because a claim means we’ve let down one of our customers. They didn’t get the property interest they thought they were buying. While our customers are glad to have the financial resources of WFG covering their loss, they would much rather have had “perfect” title and no claim. And we really hate it when we or one of our agents has to pay a claim arising from an avoidable closing or escrow error.

We hate it so much, we’ve decided to suffer the embarrassment of sharing some of our mistakes, in hopes that we can all learn from them. The names have been changed to protect the guilty.

Proofread those Legal Descriptions.

We are in an industry in which attention to detail is critical. When we go too quickly, when we let our attention to detail slip, we can make very costly mistakes. And we all know how easy it is to make an error when retyping a legal description.

Recently, we were reviewing claims reports to see what lessons our underwriters could learn in order to do our jobs better. We were shocked to see that over the last two years, 13% of our total claims were because of errors in or use of an entirely “wrong” legal description. That was a surprising statistic because we all know that many, if not most, legal description errors – while sloppy and embarrassing – don’t create so big a problem that a surveyor can’t find the property on the ground. Those that resulted in claims were so bad that our customer felt something had to be fixed.

The causes of these claims broke out into several categories – in order of frequency.

1. Not carefully proofreading after retyping a legal description into the production system. The good news is that this type of error can be corrected by going back to the parties in a recent transaction

and having everything re-executed. The bad news is that our computer systems dutifully repeated the error on every deed, mortgage, release, reconveyance and other document we produced. So, you are usually correcting a lot of documents and having an embarrassing conversation with your customers.

A disturbing number of the error files also exhibited Optical Character Recognition (OCR) artifacts – suggesting that they hadn't been proofread at all. 0's (zero) that became O's (Oh), 1s (one) which became lower case L's and letters that were run together (Comer instead of Corner) are just a few of the more common examples. Those particular errors can be understood by a surveyor.

Unfortunately, other OCR errors can significantly change the property being described, such as a call, before the point of beginning and running along the road and passing multiple other parcels, that was converted from 300' to 800.' In that example, it is quite possible to get a valid description of an entirely different parcel.

Consider the uncertainty that arises when describing a fractional section and OCR reads it as "the HE quarter of" a section. The "H" could have been an N, it could have been an S, and the difference would have only been half a mile. OCR is equally likely to make an error in a lot and block description. 8's become B's, 3's become 8's, and the like.

2. Legals that don't close, or don't match up with the easements. We are not surveyors, but as title professionals, we are responsible for making sure the properties we convey and insure have legal descriptions that make sense.

We are big fans of the DeedPlotter software (<https://deedplotter.com/>) and other similar mapping softwares. These programs can draw out a legal much more accurately and quickly than it can be done with a protractor and ruler. It is disturbing how often we find legal description errors when reviewing overlimits requests. The most common of these errors trace to retyping errors, dropped calls in the description, and reversed directions resulting in a zig-zag line.

3. Legals that don't make sense when you read them. We saw a legal recently in which a call ran to the West right of way line of Main Street; thence continuing northwesterly (bearing and distance) along the East right of way of Main Street. It turned out several calls (two lines) were skipped when it was retyped, one crossing the street, the other moving further northwesterly along the street.

4. Descriptions that only include some of the property of the borrower, or omit the intended property. While the least frequent of our legal description errors, these are among the most costly to correct. We've paid several large claims in which the mortgaged property didn't include the house, but only an adjacent lot. We had one in which the described property only included half of the house. Another, in an area of expensive homes on large lots, where the legal description was a 25' strip. Some of these errors traced back to orders placed with only a street address, some to construction spanning multiple lots, the latter to erroneously copying the description of an easement as the entire property. If your property doesn't include a residential structure (or the entirety of a residential structure) and it is intended to, more questions must be asked.

The Morals of this Story:

- Proofread what is in your production system against the legals in the back chain and against the survey. If they don't all match, you need to understand why.
- Ask yourself, does the size, shape and location of legal description make sense for the use intended? The description of a house, a shopping center, a factory are usually quite different.
- Use the tools available to map and "ground-truth" your legals. Google Maps and Google Earth are powerful tools and allow you to estimate your distances along a road. If the call along the road doesn't lead to where Google Earth located your street address, or the bearings don't roughly run parallel and perpendicular to the road, you probably need to look further.
- Buy and learn DeedPlotter or a similar mapping software – these programs are easy enough that "even a lawyer can do it!" :-)
- Keep an eye out for whether your seller or borrower owns multiple properties in the same community. That greatly increases the potential for confusion and error on your part and on the part of lenders.

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