

WFG Underwriting Bulletin



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

From: WFG Underwriting Department

Date: March 19, 2019

Bulletin No.: NB 2019-01

Subject: Insuring Title Following a Forfeiture Under State or Federal Law

The Company has received an increasing number of inquiries on insuring titles that have been forfeited to the United States, a State or local government. Such titles involve significant Constitutional Issues as well as the ability to review the adequacy of the notice required by the Due Process Clauses of the Fifth and Fourteenth Amendment.

On February 20, 2019, the U.S. Supreme Court released its decision in Timbs v. Indiana, 17-1091, 586 US ____ (2019):

https://www.supremecourt.gov/opinions/18pdf/17-1091_5536.pdf

This case involves a “civil forfeiture” pursuant to Indiana law where the State of Indiana sought forfeiture of Timbs’ vehicle after he was arrested in said vehicle while possessing heroin.

The Supreme Court held that forfeiture of the vehicle violated the Eighth Amendment’s prohibition on excessive fines as the vehicle had a fair market value of \$42,000 and the maximum fine that could be imposed upon Timbs was \$10,000 under the Indiana criminal statute that he was charged with violating. Additionally, the Court held that the Eighth Amendment was applicable to the States pursuant to the Fourteenth Amendment.

While this case involves a forfeiture under state law, its implications are larger and reflects the increased public criticism of forfeitures based upon violations of criminal statutes. While we cannot predict the future, it seems that forfeitures will be challenged in court cases for years to come.

Consequently, the Company will only insure a title which has been subject to a forfeiture as set forth below.

UNDERWRITING STANDARD FOR FORFEITURES UNDER STATE OR FEDERAL LAW:

The following Standard applies to all forfeitures, civil or criminal, under State or Federal Law.

The Company will insure such titles provided:

1. All owners and lienholders have entered an appearance in the court case giving rise to the forfeiture and have filed a consent to the forfeiture; or
2. All owners will give deeds to the buyers and all lienholders have or will file lien releases in the county records; or
3. A combination of 1 and 2. (All owners need to have either consented or will need to give a deed and all lienholders either need to consent or have filed releases.)

The policy amount will be limited to the purchase price paid for the property. We will only issue a standard owners and/or loan policy on such properties. For an owner's policy, you may not delete any standard exceptions.

Insuring these titles is an extra-hazardous risk. You will need to forward the following for underwriting approval:

1. Your commitment;
2. A chain of title or list of the parties having ownership or lien interests in the property prior to the forfeiture.
3. Copies of the court filings where the owners/lienholders consented and/or copies of the deeds or lien releases as the case may be.

If your examination reveals such a forfeiture in the back title, i.e. the current owner's title shows a prior owner who acquired it from the state, local or Federal government after a forfeiture, you may insure such title without approval provided the time period for adverse possession in the state where the property is located has passed (From the date of the deed from the state, local or Federal government) and all liens of the owner whose title was forfeited have expired under applicable law.

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.