



To: All Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: August 12, 2019
Bulletin No.: NB 2019-05
Subject: Insuring Extra-Hazardous Risks

Title insurance is based on the core concept that (a) if I do a careful enough search of the land records, (b) know the applicable law and rules, and (c) examine the search carefully enough, I can identify everyone who has an interest in a given parcel with certainty. And that's largely true! However, we all make mistakes, which is why title insurance is so important.

Even if no mistake is made, some things do fall outside of that Happy Goal. Some information simply isn't to be found in the land records; sometimes special (and unknown) rules apply; and some things are just new or complex or "weird" enough that it's hard to get them "right" every time. Those risks we classify as "Extra-hazardous" and require a WFG underwriter to review with you before insuring.

It's not that our underwriters are any better at knowing the unknowable -- just that we may have seen similar situations. Working together we can often reach a better and safer solution.

So here are some of the things we view as Extra-hazardous for which **Express Underwriting Approval is Required**.

**Title Derived in Less Common Ways or
Where Special Requirements are Imposed:**

1. Insuring title derived through: a tax deed¹;
2. Insuring title derived from (a) sheriff's deed under an execution sale; (b) Federal Marshall's deed under an execution sale; (c) sale by Commissioner of Internal Revenue for unpaid federal taxes; and, (d) other similar sales not confirmed by a court of record having jurisdiction over the parties;
3. Insuring title acquired by escheat or forfeiture, including criminal forfeitures or dealing with properties when a forfeiture action is pending.
4. Insuring title acquired through adverse possession unless a final non-appealable judicial determination of ownership has been made.

¹ Specific Tax Deed Bulletins providing more guidance nationally and in specific states can be found at <http://wfgunderwriting.com/>

5. Insuring title acquired through eminent domain/condemnation.

Certain Uses or Parties in the Chain of Title

1. Insuring transactions involving Indian / Native American / Native Band lands. These include (a) land within the boundaries of an Indian Reservation; (b) land in trust for a tribe and land in trust for individuals (sometimes referred to as “allotments”), or (c) land interests outside of a reservation owned by a tribe, or owned by an organization whose ownership includes a tribe or an entity organized under tribal law.
2. Insuring title to beaches or recreational areas or to tidelands, submerged lands, or filled lands.
3. Insuring title to present or former railroad right-of-way
4. Insuring conveyances from the federal government or agency other than by patent.
5. Insuring any property where there is any record or non-record indication it may have been used in violation of state or federal drug laws or which is owned or being acquired by a person engaged or planning to engage in drug-related activities (even in states where marijuana sales have been legalized).

Partial Interests in the Land:

1. Insuring an oil, gas, or mineral estate separate and apart from the surface interest, or providing any mineral coverage (affirmatively or by omitting the mineral exception) on agricultural or commercial property in areas of known oil, gas or mineral development or extraction.
2. Insuring any interest not connected with insuring the fee ownership of the surface interest, including but not limited to wind, water rights, improvements, subsurface storage, salt domes, or geothermal.
3. Insuring water rights whether or not in conjunction with insuring the fee ownership.
4. Insuring “air rights,” “Flying Freeholds,” transferrable development rights, or other real estate interests not connected with insuring the fee ownership of the surface interest – other than traditional condominium and cooperative units.
5. Insuring easements in gross, licenses, use rights, or prescriptive easements.
6. Insuring aerial navigation, solar access, view, or other “negative easements.”

Obviously, exceptions should be taken for such interests when insuring the property affected or burdened by such easements, reservations or rights.

Certain Types of Transactions

1. Insuring conveyances by a corporation or LLC to one of its officers, by a partnership to one of its partners; or by an attorney-in-fact to themselves.
2. Insuring conveyances which appear to be a preference or in consideration for an antecedent debt or where such a conveyance appears within five years back in the chain of title.
3. Insuring mortgages or transfers in connection with a leveraged buy-out.
4. Insuring conveyances with leasebacks to the grantor.

5. Insuring options to purchase or rights of first refusal.
6. Insuring mortgages with fractional interests in notes owned by 5 or more individuals
7. Insuring “crowd-funded” properties, where the investor group may be either a lender taking security for a loan on real property or the purchaser of the property.
8. Insuring against “Creditor’s Rights,” in a current transaction by endorsing over the creditor’s rights exclusion in title policies, by the now withdrawn ALTA 21 endorsement or other means, thus taking on the risk that an insured purchaser or lender might have its transaction set aside by a creditor as a fraudulent conveyance under federal bankruptcy laws.

Because of the Greater Risk:

1. Insuring without taking exception for any active litigation involving the subject property.
2. Insuring a sale out of a receivership.
3. Insuring transactions declined by other insurers.
4. Insuring against “mechanics’ lien” claims, when:
 - a. new construction or repair work has already started (priority lost);
 - b. work has recently been completed and the time for filing liens has not expired; and/or
 - c. you are asked to rely on indemnities to insure over existing or unfiled liens (“credit underwriting”).

This list is not all-inclusive. Anytime you have a question, concern, or just a gut feeling that something isn’t quite right, you should reach out to your WFG underwriter. Collectively, we have many years of experience and are here to help you get your transactions closed safely and profitably.

Existing or future Bulletins, some including state-specific material, may supplement or modify this Bulletin.

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.