

WFG Underwriting Bulletin



To: All WFG Policy Issuing Agents; all WFG Title Examiners and Officers
From: WFG Underwriting Department
Date: April 01, 2019
Bulletin No. NB 2019-02
Subject: No Creditor's Rights Coverages

We have recently seen Lender Closing Instructions directing the closing office to delete the creditor's rights exception from any policy or to grant affirmative coverage for such matters.

Every ALTA owner's and loan policy expressly excludes coverage for any claims that the current transaction being insured is a fraudulent conveyance, fraudulent transfer, or a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws.¹

WFG agents and direct offices are NOT to, directly or indirectly, issue or commit to issue any coverage for creditor's rights matters -- other than those specifically set forth in the approved policy forms for a given state. This prohibition also forbids issuance of the (now decertified) ALTA 21 Creditor's Rights endorsement, any of the 1970 or 1987 ALTA policy forms, or adding any affirmative coverages for creditor's rights matters to a WFG policy or commitment.

Why?

An examination of land records simply doesn't provide enough information to properly evaluate the risk of a transaction being challenged under bankruptcy or state insolvency laws. Underwriting those risks requires a careful evaluation of the transaction structure, the finances of the parties, the consideration being given, and many other factors. Underwriting creditor's rights issues is exceedingly difficult. We don't have the information and we don't have the skillsets.

Lenders have much better access to the financial information regarding their customers, understand the structure of their transactions, and are trained in evaluating credit risks. Even with that superior information, most lenders find it difficult to underwrite bankruptcy risks.

In 2011, following a very large, high profile claim, Texas changed its laws to bar any title insurer doing business in the State of Texas from issuing such coverage ANYWHERE in the nation. At

¹ Exclusion #6 of the ALTA 2006 Loan Policy. Covered risk 13 provides limited coverage for untimely recording or the failure of a recorded instrument to provide adequate constructive notice.

that point, all underwriters, including WFG, prohibited ALL creditor's rights coverages – beyond the limited coverages contained in the standard ALTA policies.

The Danger to Our Agents

Lender Closing Instructions try to establish a contractual claim against the closing agent or office. That's why the lenders go into such detail and sometimes include wholly unacceptable requirements. They are attempting to shift the risk to someone else – YOU.

Only a small subset of most lender instructions are covered by a Closing Protection Letter. Directions to provide creditor's rights coverage is definitely not among them. So acceptance of overreaching lender instructions is a risk entirely on the settlement agent.

All of which highlights the continued importance of training your staff on what to look for and the importance of a careful review of the closing instructions -- prior to closing.

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.