

WFG Underwriting Bulletin



To: All WFG Policy Issuing Agents; All WFG Title Examiners and Officers
From: WFG Underwriting Department
Date: May 4, 2020
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Subject: Claims Warning – Identifying the Right Signer for Corporations and LLCs

A key part of what we do in every closing is to make sure that the “right” person is signing our deeds and mortgages. For individuals, our search of the land records or probate records usually tell us which individuals will have to sign. Then we carefully check government issued identification documents – passports, driver’s licenses – and often other things to satisfy ourselves we are dealing with the “right” person.

It’s harder when dealing with an entity like a corporation or LLC. The land records simply tell us a property was vested in the entity. Once in a while, the land records reveal who signed documents at the time of the purchase (for example in a purchase money mortgage). But over time, even that may have changed.

We begin our review of the corporate and LLC records by checking with the state Division of Corporations’ or Secretary of State’s website. If the entity is not in “Good Standing,” we have a different problem to address. But while we are on that website, many states also identify the manager, member or officers of a registered entity. If that information is available in the state of incorporation, the chain of annual reports or updates should be checked for the last few years to identify recent changes in officers or members.

We draft our commitments to include requirements for a review of corporate bylaws, operating agreements and board resolutions. The review of those records go directly to confirming the steps that the “right” person must go through to sell or mortgage property. Sometimes super-majority approval is required, sometimes shareholder or member votes, some bylaws spell out which officers have authority, or set other conditions and requirements.

All three of those are important to a valid transaction – an entity in good standing, documents signed by the “right” officer or member, and satisfaction of the corporate formalities.

Over the last few years¹, we've seen an increase in frauds perpetrated by criminals using the websites of Secretaries of State and Divisions of Corporations to fraudulently "update" the entity's information online. With a few keystrokes, bad actors can make themselves appear to be the authorized signatories for a corporation or LLC. They then use that fraudulent authority (if we don't catch them) to sell or mortgage the entity's property. Our state officials do not have the responsibility or resources to verify the truthfulness of every filing.

There are some "Red Flags" which seem to appear in this type of fraud. We should be extra vigilant if we see:

- Free and clear property being sold or mortgaged – There is more profit in stealing a property that has no mortgage.
- Vacant land or unoccupied properties – those who occupy the property tend to ask awkward questions if someone shows up to inspect or appraise a building they or their landlord aren't selling.
- Cash out hard-money loans – hard money lenders tend to be less stringent about knowing their customers and verifying ownership – after all that's why they pay you to provide title insurance.
- The Realtor, Loan broker, or lender never met with principals.
- Recent changes in ownership from an individual to an LLC/corporation or from one entity to another. Those who know of the industry's "streamlined searching" practices sometimes think this will insulate the initial fraudulent transaction from scrutiny. Each transfer needs to be validated.
- The operating agreements and/or corporate bylaws provided were not executed at time of incorporation or purchase of property.
- Changes within the last year or two to the managers, members or officers on the Division of Corporations' or Secretary of State's website. Closely held LLCs typically do not add members or change signatories at or near the time of a transaction.

As a routine part of any transaction involving an entity, you should be checking the information provided on the Division of Corporations' or Secretary of State's websites (if any) and comparing it to the organizational documents provided. If you find a change to the listed managers, members, or officers occurring the last year or so, it's incumbent on the closer to contact the prior officer, member or manager at an independently obtained phone number or address (if they are asked, the bad guys are more than happy to provide a co-conspirator to pretend to be the prior LLC owner).

¹ Both ALTA <https://www.alta.org/news/news.cfm?20181213-Fraud-Alert-LLC-Identity-Theft> and CLTA <https://www.clta.org/news/433829/Fraud-Alert-LLC-Identity-Theft.htm> have issued alerts about this practice.

We also encourage our agents to make it a routine practice to send a “thank you for letting us handle your sale” letter to any seller of residential property – using the address shown by the tax collector. People tend to respond quickly if they weren’t really selling their property.

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The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.