

WFG Underwriting Bulletin



To: All WFG Policy issuing agents; all WFG title examiners and escrow officers, except North Carolina and Virginia
From: WFG Underwriting Department
Date: March 7, 2022
Bulletin No. NB-2022-03
Subject: Hard Money Lenders, Large Cash-Out Mortgages

Like most underwriters, WFG has experienced higher rates of fraud, claims and title losses in transactions funded by hard money lenders. Both to better protect those lenders, as our insureds, and to manage the claims risks, we are implementing the following requirements for insuring ANY HARD MONEY LOAN.

- 1. Enhanced Identification of Signatories.** We have seen a number of hard money lenders fall prey to identity thieves and strawmen.

If the signing of loan documents is not being physically conducted in the office of a WFG agent or WFG office, the closing office must have at least one document signed by each buyer, seller, or borrower using a Remote Online Notarization (RON) platform.

In that signing, the signatories must pass Knowledge Based Authentication, credential analysis and be video recorded.

This requirement is to take advantage of the greater identity proofing in the RON process. It does not authorize the RON execution of recordable and insured documents in states for which full RON closings have not been approved. See Bulletin [NB 2020-04](#). The remotely notarized instrument may be an Affidavit of Identity or the certification of “no Work done” described in section 4 or any other unrecorded document.

In addition, the signatories should be “Googled” and, if available, run through Lexis Nexis to gather images and other data to help confirm identities

Then ask the kinds of questions that only the legitimate owner is likely to know:

- How old is the home?
- Is the property vacant?
- What is the mailing address on your tax bill?
- Do you have existing debts against the property?

And confirm that the buyer and/or broker had an actual walkthrough of the home and ask how access was provided.

If this process raises any concerns, talk with your underwriter.

2. Direct Communication with Borrower/Seller.

This is good advice for all transactions, but is required for any hard money loan transaction involving \$50,000 or more cash out. Google your parties. Very often you can find a phone number linked to the address. If it doesn't match the phone number you have been using to communicate with the Borrower and Seller, call it and see if you reach the same party. Ask them if they are selling or borrowing against their property.

3. Deeper Search and Independent Validation of Mortgage Payoffs/Releases, Foreclosures and Suspect Transactions.

The title search used for any hard money loan transaction must go back at least four years (or longer in states with longer minimum search periods). This places the onus on the agent to identify hard money transactions and order an appropriate search at the outset.

We have seen variations on each of these frauds then using a hard money lender as part of their "Cash-out" strategy. To better protect our hard money lender customers, additional steps are required as follows:

- a. **Compare Signatures.** When available in other recorded instruments, compare the party's signature on a previously recorded instrument to the signatures on documents in the current transaction.
- b. **Confirm Valid Satisfactions/Reconveyances.** The lender or servicing company issuing any mortgage satisfaction or reconveyance of a deed of trust that did not occur in conjunction with a recorded refinancing or sale (which would explain the payoff) must be contacted by the closing agent at a phone number obtained independently of the recorded satisfaction/reconveyance, the validity of the satisfaction/reconveyance verified, and your file documented accordingly. This has been the policy for all types of lenders for a number of years. See [Bulletin NB-2015-10](#).
- c. **Verify Foreclosures.** In addition to the examination of foreclosure procedures appropriate for a given State: (i) the closing agent must contact the trustee or lender (identified in the first recorded notice of default using an independently obtained phone number) to verify the validity of any trustee's foreclosure sale deed; and (ii) any sale following a judicial foreclosure must be verified through a review of the court docket to confirm that there was actually a court ordered foreclosure.
- d. **Confirm Decedents.** Any conveyance purporting to be out of an estate or probate must be verified through a review of the court docket. Any conveyance purporting to be by heirs of a decedent must be verified against death certificates, obituaries or other notices.

- e. **Verify Assignments of Mortgage.** Assignments of the mortgage to a non-institutional holder and recent conveyances not accompanied by institutional mortgages must be verified by the closing agent with the originating lender and grantor as appropriate using an independently obtained phone number.
4. **Mechanic's Lien Exceptions.** Some of our hard money lender customers finance "Fix and Flip" buyers. By definition, these transactions always implicate mechanics lien and construction lien laws. Because of the differences in those laws, their handling will differ state to state. On hard money loan transactions we start with the presumption that there is "broken priority" because of work started by the owner/borrower.

For Hard money lenders, the standard exception for mechanics liens/construction liens **may not be removed** from a commitment and must remain in the final policy **unless expressly approved by WFG underwriting.**

Any submissions requesting the approval to insure against mechanics liens/construction liens should be accompanied by a written certification from BOTH the hard money lender AND the borrower that no work has been done on the property during the last 180 days, and no work will be commenced until after the new mortgage has been recorded.

Insuring mechanics or construction liens in any "Broken Priority" situation for any lender or buyer is an extra-hazardous risk which must be expressly approved by WFG underwriting.

5. **Document Your Files.** Identity theft claims get ugly quickly, and one of the first suggestions is that the closing agent must have been complicit, should have known, etc. A well-documented file, showing that you took all of the steps above helps avoid those types of claims.

Thank you for understanding the need to tighten the standards in order to protect our insureds in this unique class of business.

NOTE: This Bulletin should not be interpreted as reflecting negatively upon the character of an individual or entity mentioned herein and 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.