

WFG Underwriting Bulletin



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

From: WFG Underwriting Department

Date: November 14, 2022

Bulletin No.: NB 2022-13

Subject: Update - Insuring Title Following a State or Federal Forfeiture

This Bulletin supplements and supersedes Bulletin [NB 2019-01](#) titled, "Insuring Title Following a State or Federal Forfeiture".

Since the release of Bulletin [NB 2019-01](#) in March, 2019, WFG has been asked to review and approve an increasingly large volume of forfeitures. This Bulletin supplements and supersedes NB 2019-01 and outlines the process by which forfeitures should be submitted for approval, the documentation required for approval and other miscellaneous, but extremely important information you will need to communicate to any proposed insured(s).

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. You have a purchase contract. WFG will not review nor approve a forfeiture unless you have a purchase contract for the property in question.
2. 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
3. All owners will give deeds to the buyers and all lienholders have released or will file lien releases in the county records; or
4. A combination of 2 and 3. (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.)
5. The policy amount will be limited to the purchase price paid for the property.
6. We will only issue a standard owners and/or loan policy on such properties.

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7. For an owner's policy, you may not delete any standard exceptions.

SUBMITTING A FORFEITURE FOR APPROVAL BY WFG

Insuring a forfeiture constitutes an Extra-Hazardous Risk. You must submit the following:

1. A summary of how the Underwriting Standard above has been met. This summary must include a list of persons or entities that have an interest in the real estate, what that interest is, and whether they filed a consent in the forfeiture or will be required to give a deed/release.

Examples:

- i: ABC LLC, owner by virtue of the deed recorded _____ and attached as Page 2 in the Search Attachment. Consent filed in forfeiture. See Page 8, Court Document Attachment;
 - ii: Wells Fargo, lienholder by virtue of the mortgage recorded _____. See Page 6 in Search Attachment. Consent filed in Agreed Order, see Page 15, Court Document Attachment;
 - iii. The Dells Homeowners Association by virtue of a lien filed _____. See Page 28 in Search Attachment. No consent found, release required as Schedule B 1, Item 6.
2. Your commitment
 3. Relevant documents

DEVIATIONS FROM THE UNDERWRITING STANDARD

You may deviate from the Underwriting Standard above under the following circumstances:

1. Your examination reveals 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 a forfeiture without underwriting 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, Federal government or from the date of the deed resulting from any judicially ordered sale.) and all liens filed prior to the forfeiture have expired under applicable law or have been released by the creditor; or

2. The policy amount to be issued exceeds \$1,000,000 and you obtain approval of WFG to deviate from the Underwriting Standard above. To receive approval, you must submit the following:
 - a. A summary of the forfeiture proceeding:

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- i. List of all persons with an interest in the property with page reference in an attachment;
 - ii. Which persons consented;
 - iii. For persons who did not consent, whether they made an appearance in the forfeiture or whether a default was taken against them (Failure to appear and make a claim in the forfeiture)
 - iv. For persons who defaulted, how was the Notice of Forfeiture served. Returns of service must be carefully scrutinized for defects. You may not rely on a finding by the Court that a party was served. See “Pitfalls” below.
 - v. Provide page references in attachments corresponding to applicable documents for the items in the summary. Examples:
 - 1. ABC LLC, owner by virtue of deed recorded blank (Page 6, Search Attachment), did not consent, but made appearance (Page 12, Court Documents Attachment)
 - 2. Chase Bank, mortgage recorded _____ (Page 19, Search Attachment), consented by agreed order filed _____ (Page 28, Court Documents Attachment)
 - 3. George Smith, judgment lienholder filed _____ (Page 38, Search Attachment), did not consent, but served personally by US Deputy Marshal T. Jones (Return of Service on Page 63, Court Document Attachment)
- b. Your commitment
 - c. Search documents
 - d. Court docket
 - e. Relevant court documents listed on the court docket:
 - i. Complaint for forfeiture/indictment/information/other justification for forfeiture
 - ii. Lis Pendens Notice
 - iii. Notice of Forfeiture
 - iv. Preliminary Order of Forfeiture
 - v. Service documents: Return of Service for personal service, Certified Mail Return Receipts, Fed-Ex or other common carrier delivery receipts, etc. Please note that posting a notice on the property and/or publication on a government website, aka www.forfeiture.gov, will not be considered adequate in the vast majority of forfeitures.
 - vi. Notice of Appearance filed by counsel for parties
 - vii. Consents
 - viii. Final Order of Forfeiture

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- ix. Any other order determining the parties have forfeited their interest in the property
- f. WFG may opt to impose an Extra-Hazardous Risk Premium and/or provide coverage for risks in the forfeiture proceeding via an ALTA 34.1 (Identified Exception and Risk Endorsement) as may be permitted in the Rate Manual for the state where the real property is located.

PITFALLS

Here is a list of the most common “errors” we have found when reviewing forfeiture files:

1. Basic title defects are often missed due to the focus on the forfeiture: missing interests, defects in deed executions, defective acknowledgements, legal description errors, defects in probate, failure to record a power of attorney when a deed was executed by the attorney in fact (where required by state law), etc.
2. Consents to forfeiture being made by people in their individual capacity where title was held by an entity such as an LLC and the entity did not consent, did not enter an appearance and was not properly served with the Notice of Forfeiture.
3. Defects in service of the Notice of Forfeiture. Service of this Notice must be made pursuant to Federal Civil Rule of Procedure 4, et. seq.:

a. Certified Mail Return Receipts:

Reviews of certified mail cards/Fed Ex delivery receipts have revealed attempts by the United States in a Federal forfeitures to serve a party addressed “C/O” restaurants the alleged criminal was known to frequent based upon FBI surveillance, a law firm that once represented the person in a civil matter, a property management company, a warehouse that conducted online auctions and drop shipping. With a reasonable degree of certainty, such service attempts aren’t going to reach the individual/party. The “C/O” is either going to send it back or more likely than not, throw it in the trash.

b. Personal Service by US Marshall or Process Server/Posting Notice at Property:

Reviews of the Return of Service when service was attempted personally by a Deputy US Marshall at the property in question have revealed that the property was vacant and the Notice of Forfeiture was stapled to the front door or on the picket fence in front of the property. A notice on vacant property is not reasonable calculated to provide notice to affected parties.

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c. Government Website:

“Publication” of the Notice of Forfeiture on a website aka www.forfeiture.gov is rarely going to be considered sufficient notice to a party with an interest in the real estate. This is especially true when the party can be located with reasonable due diligence.

To paraphrase one court’s opinion on the sufficiency of service via www.forfeiture.gov, “People have better things to do with their lives than check a government website to see if the government is trying to take their stuff.”

SUMMARY

Federal/State prosecutors and law enforcement are experts in criminal law/procedure while being incredibly dedicated and passionate about what they do best: putting criminals in jail. They are not, as a general rule, experts in real estate, marketable title or ensuring title can be insured. This makes reviewing forfeiture titles time consuming and expensive.

The Underwriting Standard above is designed to eliminate time consuming and costly elements, namely, reviewing service records and reading court decisions on whose interest was forfeited by requiring deeds, releases and/or consents.

The two permitted deviations from the Underwriting Standard involve situations where the passage of time minimizes the risks due to adverse possession or there will be a policy over \$1,000,000 where the premium justifies the underwriting expense.

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