

WFG Underwriting Bulletin



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

From: WFG Underwriting Department

Date: September 8, 2023

Bulletin No.: NB 2023-08

Subject: Ruling in 8th Circuit impacts USA Federal Liens in Non-Judicial tax foreclosure proceeding.

The 8th Circuit Federal Court of Appeals recently affirmed a decision in *Show Me State Premium Homes, LLC vs. George L. McDonnell, et al.*, Case No 22-1894, that contained two rulings impacting the title insurance industry:

1. A Federal lien (Other than a Federal Tax Lien) or mortgage/deed of trust in favor of the United States (HUD, VA, etc.) survives a non-judicial tax foreclosure proceeding vesting title in a titleholder who purchases the property at tax sale.
2. A Federal lien (Other than a Federal Tax Lien) or mortgage/deed of trust in favor of the United States (HUD, VA, etc.) survives a subsequent quiet title action filed by the tax sale purchaser when the only basis for quieting title is the non-judicial tax foreclosure.

*NOTE: Any guidelines given in this bulletin do **not** apply to a federal IRS tax lien, which has their own set of rules and requirements for notice and discharge in a non-judicial tax foreclosure. Those rules can be found [HERE](#).*

Case Background

The United States Department of Housing and Urban Development (HUD) held two deeds of trust on a Missouri home. They were security for home-equity loans taken out by a couple that previously owned it. When the owners of the property fell behind on their property taxes, the county tax collector put the house up for auction. A bond company bought it, received a deed, and then sold it to Show Me Premium Homes, LLC.

Worried about the marketability of its title (and likely advised to do so by a title company), Show Me filed a quiet title action in Missouri State Court to request an order declaring that all other interests in the home, including those belonging to the United States, had been extinguished through the tax foreclosure. The USA successfully removed the case to the US District Court and filed a Motion to Dismiss on the basis that their liens could not be foreclosed without a judicial sale under 28 U.S.C. § 2410(c). The District Court agreed with the USA and ruled in their favor. Plaintiff appealed to the 8th Circuit Court of Appeals whom, for our purposes, affirmed the District Court's decision. As of now, the case has not been appealed to the United States Supreme Court.

Discussion of 28 U.S.C. § 2410

For the purposes of this bulletin we focus mainly on 28 U.S.C. § 2410(c), which reads in relevant part as follows:

(c) A judgment or decree in such action or suit shall have the same effect respecting the discharge of the property from the mortgage or other lien held by the United States as may be provided with respect to such matters by the local law of the place where the court is situated. However, an action to foreclose a mortgage or other lien, naming the United States as a party under this section, must seek judicial sale. A sale to satisfy a lien inferior to one of the United States shall be made subject to and without disturbing the lien of the United States, unless the United States consents that the property may be sold free of its lien and the proceeds divided as the parties may be entitled. Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem, except that with respect to a lien arising under the internal revenue laws.....

To summarize the above:

- If the federal lien or mortgage of the USA is senior to the lien being foreclosed on, the lien of the USA survives.
- If the federal lien (Other than a Federal Tax Lien) or mortgage of the USA is junior to the lien being foreclosed on, a judicial sale naming the USA as a party must be held. The USA then has 1 year from the date of sale to redeem.
- If the federal lien (Other than a Federal Tax Lien) or mortgage of the USA is junior to the lien being foreclosed on in a non-judicial or quasi-foreclosure proceeding, the lien of the USA survives.

The question up for argument in this case was whether the non-judicial tax foreclosure proceeding in Missouri constituted a “judicial sale” under 28 USC 2410(c) which would then allow title to be quieted against the HUD mortgages in favor of Show Me in the subsequent quiet title action that was filed.

A non-judicial tax foreclosure in Missouri consists of the county tax collector putting the property up for tax sale via online auction. The purchaser can then apply for a Collector’s Deed once the applicable redemption period has expired. Missouri courts have described this process in the past as an “administrative proceeding” to foreclose on the property rather than a “judicial sale” of the property to foreclose, which was a point emphasized by the courts in this case. As such, both the District Court and the Court of Appeals concluded that this proceeding was not considered a judicial sale as required under 28 USC 2410(c), and therefore Show Me was unable to quiet title against the HUD mortgages in their subsequent filing.

Since the basis for quieting title against the HUD mortgages was not a judicial sale under 28 USC 2410(c), the HUD mortgages survived and remained liens on title.

As a result, what are WFG’s underwriting standards for insuring title acquired via tax sale?

Going forward, if title is acquired via a non-judicial tax foreclosure proceeding, we will accept one of the following to insure:

1. An Order quieting title to the tax sale purchaser with all parties properly noticed, and releases of any mortgages or federal liens (other than a Federal Tax Lien) in favor of the USA that have not expired.
2. A deed from the prior owner who lost the property on tax sale and releases of all liens that have not expired.

**If your state underwriter allows for the alternative method of reviewing the tax foreclosure file via FOIA, etc. to determine insurability without one of the above, a release of any mortgages or federal liens in favor of the USA is still required unless they have expired.

**If the tax deed meets your state underwriter's time limit for insurability without the additional above curative, a release of any mortgages or federal liens in favor of the USA is still required unless they have expired.

Please contact National Underwriting at Underwriting@wfgnationaltitle.com if you have any questions.

NOTE: 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.