



NATIONAL UNDERWRITING BULLETIN

FROM: WFG Underwriting Department

DATE: October 21, 2014

TO: All Policy Issuing Agents of WFG National Title Insurance Company in Alabama, Alaska, Connecticut, D.C., Delaware, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, Oregon, Pennsylvania, Rhode Island, Tennessee, Washington, & West Virginia

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SUBJECT: Condo/HOA Super-Priority Liens
Issuance of Series 4 & 5 Endorsements

Recent cases in multiple jurisdictions¹ remind us that the laws of some states allow a Condo or Home Owners Association Lien foreclosure to wipe out a validly recorded first mortgage. These rulings are not unexpected. The laws of 22 jurisdictions contain provisions giving some degree of "super-priority" to the liens of condominium associations and/or community associations.² These 22 jurisdictions follow, in part, the framework of various "Uniform" statutes on condominiums and planned unit developments.³

Typically, under the various "uniform" statutes, the priority of the association lien is effectively split. The first 6 months' worth of assessments has a priority ahead of the first mortgage, and all additional amounts owed to the association are subordinate to the first mortgage.⁴ But if an association forecloses the priority portion, it eliminates ALL subordinate liens including the first mortgage – and the sale proceeds are then allocated in accord with the priorities. Under most of these acts, a second mortgage is fully subordinate to the association lien.

ALTA provides alternative versions of the Condo and PUD endorsements specifically to deal with the differing treatment of association lien priority by the various states. Deciding which form of endorsement

¹ *Chase Plaza Condominium Association, Inc. v. JP Morgan Chase Bank, N.A.*, ___ A.3d ___, 2014 WL 4250949 (D.C. App. 2014); *SFR Investments Pool 1, LLC, V. U.S. Bank, N.A.*, ___ P.2d ___, Case No. 63078 (Nev. 2014); *Summerhill Village Homeowners Assoc. v. Roughley*, 270 P.3d 639 (Wash. Ct. App. 2012). (Following this case, the Washington Legislature extended redemption rights to subordinate lienholders)

² National Matrix of Association "Super-priority" Lien Legislation by Hugh Lewis, October 25, 2013 <http://www.uniformlaws.org/shared/docs/jeburpa/CAlienprioritymatrix2013.pdf>. See also: Joint Editorial Board for Uniform Real Property Acts report entitled "The Six-Month "Limited Priority Lien" for Association Fees Under The Uniform Common Interest Ownership Act, (June 1, 2013). Florida gives priority to collection, but does not give lien priority.

³ The Uniform Common Interest Ownership Act (UCIOA), the Uniform Condominium Act (UCA), the Model Real Estate Cooperative Act, and/or the Uniform Planned Community Act (UPCA).

⁴ Some States have deviated from the 6 month standard. Nevada allows 9 months, Florida the lesser of 12 months or 1% of the mortgage balance. Some states, like California, allow priority to be set in the body of the Declaration of Condominium or Homeowners Covenants.

is appropriate for your use will depend on the law of a given state and in some states whether you are insuring a first or second mortgage. As with any endorsements, the agent is responsible for conducting the due diligence and underwriting appropriate to a given endorsement.

The coverages provided by the alternative versions are dramatically different. The 4-06 and 5-06 endorsements insure against the “priority of any lien for charges and assessments [to the respective association] over the lien of any Insured Mortgage identified in Schedule A.” In contrast the 4.1-06 and 5.1-06 insure that there are no charges or assessments “unpaid at date of policy.”

The Acts adopted in many states limit the ability to waive any of the statutory provisions. So, as noted in the SFR Investments Pool 1 case, language in the Declaration purporting to give a first mortgage a priority ahead of assessments may not be effective in those states.

Based on this, WFG’s underwriting standards are as follows:

1. The 4.1-06 and 5.1-06 endorsements should be your standard condo and PUD endorsements, issued after verifying that all association charges are paid current. The 4-06 and 5-06 should only be used in those states where required by a state rule and/or when requested by a lender and then only in a state where a condo/PUD lien does not enjoy priority over a previously filed, insured mortgage as a matter of law.
2. In the following jurisdictions Condominium Liens have a super-priority status, so the ALTA 4 and 4-06 and 5 and 5-06 are NEVER TO BE ISSUED in these states:

Alabama	Hawaii	New Hampshire	Vermont
Alaska	Illinois	New Jersey	Washington
Colorado	Maryland	Oregon	West Virginia
Connecticut	Massachusetts	Pennsylvania	
D.C.	Minnesota	Rhode Island	
Delaware	Nevada	Tennessee	

Only the 4.1-06 and 5.1-06 condominium endorsements should be used in these states for title insurance policies on condominiums/PUD’s.

Please remove the ALTA 4 and 5 endorsements from your systems in these states so they aren’t issued inadvertently.

3. In these states, WFG Agents should NOT issue a 4-06 or 5-06 Endorsement based on “the first mortgage has priority” language sometimes contained in the recorded Declaration or CC&R. The “uniform” acts in many states limit the ability to waive the statutory priority. If you have such language in a specific Covenant and have been asked to issue an endorsement assuring priority, please contact your WFG Underwriter and point it out.
4. WFG Agents may NOT insure title based on foreclosure of a condominium or HOA lien without taking exception for all unsatisfied mortgages or approval of your WFG Underwriter. In spite of the cases cited, these types of scenarios are highly likely to generate future litigation.

If you have questions about any of this, please contact your WFG underwriter.

NOTE: This bulletin is intended for use by title issuing offices, title insurance agents and approved attorneys of WFG National Title Insurance Company and any reliance by any other person or entity is unauthorized. This bulletin is intended solely for the purpose of underwriting policies of WFG National Title Insurance Company.