

## CLTA Guarantee Form No. 1: Litigation Guarantee

### CLTA Guarantee Face Page

This guarantee, when issued by the Company with a Guarantee Number and Date of Guarantee, is valid even if this guarantee or any endorsement to this guarantee is issued electronically or lacks any signature.

Any notice of claim and any other notice or statement in writing required to be given to the Company under this guarantee must be given to the Company at the address shown in Condition 14.

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This guarantee treats any Discriminatory Covenant in a document referenced in any of the Schedules herein as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. This guarantee is not a commitment or any indication that the Company is willing to issue a policy of title insurance, and the Company reserves the right to decline to insure any future purchaser or lender. Any future offer of title insurance that the Company, in its sole discretion, decides to issue may include additional exceptions as well as requirements for the issuance of a final policy of title insurance.

SUBJECT TO THE CLTA GUARANTEE EXCLUSIONS AND CONDITIONS,

WFG NATIONAL TITLE INSURANCE COMPANY  
, a Florida corporation (the "Company")

GUARANTEES  
as of the Date of Guarantee

against loss or damage, not exceeding the Amount of Liability, sustained by the Assured by reason of any incorrectness in the Assurances set forth in Schedule A.

**WFG NATIONAL TITLE INSURANCE COMPANY**

By:

  
Steve Ozonian, President/CEO

ATTEST:

  
Joseph V. McCabe, EVP/General Counsel/Secretary



## EXCLUSIONS

Except as expressly provided by the assurances in Schedule A, the following matters are excluded from coverage of this guarantee and the Company assumes no liability for loss or damage by reason of:

1. Any defect, lien, encumbrance, adverse claim, or other matter affecting the title to any property beyond the boundaries of the Land.

2. Any defect, lien, encumbrance, adverse claim, or other matter, whether or not shown by the Public Records:

- a. created, suffered, assumed, or agreed to by one or more of the Assureds; or
- b. that result in no loss to the Assured.

3. Defects, liens, encumbrances, adverse claims, or other matters not shown by the Public Records at Date of Guarantee.

4. The identity of any party shown or referred to in any of the schedules of this guarantee.

5. The validity, legal effect or priority of any matter shown or referred to in any of the schedules of this guarantee.

6. (a) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or, (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (a) or (b) are shown by the records of the taxing authority or by the Public Records.

7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excluded under (a), (b) or (c) are shown by the Public Records.

8. Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land.

[9. Any claim to (a) ownership of or rights to minerals and similar substances, including but not limited to ores, metals, coal, lignite, oil, gas, uranium, clay, rock, sand, and gravel located in, on, or under the Land or produced from the Land, whether such ownership or rights arise by lease, grant, exception, conveyance, reservation, or otherwise; and (b) any rights, privileges, immunities, rights of way, and easements associated therewith or appurtenant thereto, whether or not the interests or rights excluded in (a) or (b) appear in the Public Records.]

*[Drafting Instruction: Exclusion 9 is bracketed for optional deletion in the event the purpose of the guarantee is to provide information regarding mineral ownership.]*

## CONDITIONS

### 1. Definition of Terms.

The following terms when used in this guarantee mean:

a. "Amount of Liability": The Amount of Liability as stated in Schedule A.

b. "Assured": The party or parties named as the Assured in Schedule A, or on a supplemental writing executed by the Company.

c. "Date of Guarantee": The Date of Guarantee set forth in Schedule A.

d. "Discriminatory Covenant": Any covenant, condition, restriction, or limitation that is unenforceable under applicable law because it illegally discriminates against a class of individuals based on personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin, or other legally protected class.

e. "Land": The Land described or referred to in Schedule A and improvements located on that land at the Date of Guarantee that by State law constitute real property. The term "Land" does not include any property beyond that described in Schedule A, nor any right, title, interest, estate, or easement in any abutting street, road, avenue, alley, lane, right-of-way, body of water, or waterway.

f. "Mortgage": A mortgage, deed of trust, trust deed, or other real property security instrument.

g. "Public Records": The recording or filing system established under State statutes in effect at the Date of Guarantee under which a document must be recorded or filed to impart constructive notice of matters relating to the Title to a purchaser for value without knowledge. The term "Public Records" does not include any other recording or filing system, including any pertaining to environmental remediation or protection, planning, permitting, zoning, licensing, building, health, public safety, or national security matters.

h. "State": The state or commonwealth of the United States within whose exterior boundaries the Land is located. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.

i. "Title": The estate or interest in the Land identified in Schedule A, if any.

## **2. Notice of Claim to be Given by Assured.**

The Assured must notify the Company promptly in writing if the Assured has knowledge of any assertion of facts, claim of title or claim of interest that is contrary to the assurances set forth in Schedule A and that might cause loss or damage for which the Company may be liable under this guarantee. If the Company is prejudiced by the failure of the Assured to provide prompt notice, the Company's liability to the Assured under this guarantee is reduced to the extent of the prejudice.

## **3. No Duty to Defend or Prosecute.**

The Company has no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

## **4. Company's Option to Defend or Prosecute Actions; Duty of Assured to Cooperate.**

Even though the Company has no duty to defend or prosecute as set forth in Condition 3 above:

a. The Company has the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, or to do any other act which in its opinion may be necessary or desirable to establish the correctness of the assurances set forth in Schedule A or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this guarantee, whether or not it may be liable hereunder, and does not thereby concede liability or waive any provision of this guarantee. If the Company exercises its rights under this paragraph, it will do so diligently.

b. If the Company elects to exercise its options as provided in Condition 4.a. the Company has the right to select counsel of its choice (subject to the right of the Assured to object for reasonable cause) to represent the Assured and will not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this guarantee.

c. Whenever the Company has brought an action or interposed a defense as permitted by the provisions of this guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

d. In all cases where this guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, the Assured must secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the Assured for this purpose. Whenever requested by the Company, the Assured, at the Company's expense, must give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the correctness of the assurances set forth in Schedule A or to prevent or reduce loss or damage to the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under this guarantee will terminate.

## **5. Proof of Loss or Damage.**

a. The Company may, at its option, require as a condition of payment that the Assured furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, adverse claim, or other matter that constitutes the basis of loss or damage and must state, to the extent possible, the basis of calculating the amount of the loss or damage.

b. The Company may reasonably require the Assured to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence, memoranda, reports, e-mails, disks, tapes, and videos, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured must grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this

Condition 5 will not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim or required by law. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, terminates any liability of the Company under this guarantee to the Assured for that claim.

## **6. Options to Pay or Otherwise Settle Claims: Termination of Liability.**

In case of a claim under this guarantee, the Company has the following additional options:

a. To pay or tender payment of the Amount of Liability, together with any costs, attorneys' fees, and expenses incurred by the Assured that were expressly authorized in writing by the Company up to the time of payment or tender of payment and that the Company has agreed to pay.

b. To pay or otherwise settle with the Assured any claim assured against under this guarantee. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Assured that were expressly authorized in writing by the Company, up to the time of payment or tender of payment and that the Company has agreed to pay; or

c. To pay or otherwise settle with parties other than the Assured for the loss or damage provided for under this guarantee, together with any costs, attorneys' fees, and expenses incurred by the Assured that were expressly authorized in writing by the Company up to the time of payment and that the Company has agreed to pay.

Upon the exercise by the Company of any of the options provided for in Condition 6 a., b., or c., the Company's obligations to the Assured under this guarantee for the claimed loss or damage, other than the payments required to be made, will terminate, including any duty to continue any and all litigation initiated by the Company pursuant to Condition 4.

## **7. Limitation of Liability.**

a. This guarantee is a contract of indemnity against actual monetary loss or damage sustained or incurred by an Assured who has suffered loss or damage by reason of an assurance in Schedule A being incorrect, to the extent stated in Schedule A and subject to the Exclusions and the Conditions. This guarantee is not an abstract of the title, legal opinion, or a representation of the status of the title beyond what is assured in Schedule A. All claims asserted under this guarantee are based in contract and are restricted to the terms and provisions of this guarantee. The Company is not liable for any claim alleging negligence or negligent misrepresentation arising from or in connection with this guarantee.

b. If the Company, or the Assured under the direction of the Company at the Company's expense, removes the alleged defect, lien or, encumbrance or cures any other matter assured against by this guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it will have fully performed its obligations with respect to that matter and will not be liable for any loss or damage caused thereby.

c. In the event of any litigation by the Company or with the Company's consent, the Company has

no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom.

d. The Company is not liable for loss or damage to the Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

**8. Reduction of Liability or Termination of Liability.**

All payments under this guarantee, except payments made for costs, attorneys' fees, and expenses pursuant to Condition 4, will reduce the Amount of Liability under this guarantee pro tanto.

**9. Payment of Loss.**

When liability and the extent of loss or damage has been determined in accordance with the Conditions, the Company will pay the loss or damage within thirty (30) days.

**10. Subrogation Upon Payment or Settlement.**

a. If the Company settles and pays a claim under this guarantee, it is subrogated and entitled to the rights and remedies of the Assured in respect to the claim that the Assured has against any person, entity, or property to the fullest extent permitted by law, but limited to the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Assured must execute documents to transfer these rights and remedies to the Company. The Assured permits the Company to sue, compromise, or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights and remedies.

b. If a payment on account of a claim does not fully cover the loss of the Assured, the Company defers the exercise of its subrogation right until after the Assured fully recovers its loss.

c. The Company's subrogation right includes the Assured's rights to indemnity, guaranty, warranty, insurance policy, or bond, despite any provision in those instruments that addresses recovery or subrogation rights.

**11. Liability Limited to This Guarantee; Guarantee Entire Contract.**

a. This guarantee together with all endorsements, if any, issued by the Company is the entire guarantee and contract between the Assured and the Company. In interpreting any provision of this guarantee, this guarantee must be construed as a whole.

b. Any amendment of this guarantee must be by a written endorsement issued by the Company. To the extent any term or provision of an endorsement is inconsistent with any term or provision of this guarantee, the term or provision of the endorsement controls. Unless the endorsement expressly states, it does not:

- i. modify any prior endorsement,
- ii. extend the Date of Guarantee,
- iii. insure against loss or damage exceeding the Amount of Liability, or
- iv. increase the Amount of Liability.

**12. Severability.**

In the event any provision of this guarantee, in whole or in part, is held invalid or unenforceable under applicable law, this guarantee will be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

**13. Choice of Law; Forum.**

a. Choice of Law: The Company has underwritten the assurances covered by this guarantee and determined the premium charged in reliance upon the State law affecting interests in real property and the State law applicable to the interpretation, rights, remedies, or enforcement of guarantees and policies of title insurance of the State where the Land is located.

The State law of the State where the Land is located, or to the extent it controls, federal law, will determine the validity of claims and the interpretation and enforcement of the terms of this guarantee, without regard to conflicts of law principles to determine the applicable law.

b. Choice of Forum: Any litigation or other proceeding brought by the Assured against the Company must be filed only in a State or federal court having jurisdiction.

**14. Notices, Where Sent.**

All notices required to be given the Company and any statement in writing required to be furnished the Company must include the number of this guarantee and must be addressed to the Company at 12909 SW 68<sup>th</sup> Parkway, Suite 350, Portland, OR 97223. WFG National Title Insurance Company's telephone number is (800) 334-8885.

**15. Arbitration.**

a. All claims and disputes arising out of or relating to this guarantee, including any service or other matter in connection with issuing this guarantee, or any breach of a guarantee provision, may be resolved by arbitration. If the Amount of Liability is \$2,000,000 or less, any claim or dispute may be submitted to binding arbitration at the election of either the Company or the Insured. If the Amount of Liability is greater than \$2,000,000, any claim or dispute may be submitted to binding arbitration only when agreed to by both the Company and the Assured. Arbitration must be conducted pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("ALTA Rules"). The ALTA Rules are available online at [www.alta.org/arbitration](http://www.alta.org/arbitration). The ALTA Rules incorporate, as appropriate to a particular dispute, the Consumer Arbitration Rules and Commercial Arbitration Rules of the American Arbitration Association ("AAA Rules"). The AAA Rules are available online at [www.adr.org](http://www.adr.org).

b. ALL CLAIMS AND DISPUTES MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL PROCEEDING IN ANY ARBITRATION GOVERNED BY CONDITION 15. The arbitrator does not have authority to conduct any class action arbitration, private attorney general arbitration, or arbitration involving joint or consolidated claims under any circumstance.

c. If there is a final judicial determination that a request for particular relief cannot be arbitrated

in accordance with this Condition 15, then only that request for particular relief may be brought in court. All other requests for relief remain subject to this Condition 15.