

## WFG Underwriting Bulletin



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

From: WFG Underwriting Department

Date: September 25, 2018

Bulletin No.: NJ2018-04

Subject: Notice of Settlement, pursuant to N.J.S.A. 46:26A-11 – Underwriting Requirement

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The recording of a Notice of Settlement (“NOS”) is authorized under **N.J.S.A. 46:26A-11**. To say the use of these is valuable to title insurers in New Jersey is an understatement. It’s a legislatively created tool that we must all take advantage of to help protect from the potential loss of priority and resulting claims caused by the unavoidable “gap” periods (i.e. “pre-closing gap” - period of time between the county board date and closing or “post-closing gap” – period between closing date and recording date.)

The NOS statute, at **N.J.S.A.46:26A-11(f)** says: Any person who claims an interest in or lien on the real property described in the notice of settlement arising during the time that a notice of settlement is effective shall be deemed to have acquired the interest or lien with knowledge of the anticipated settlement and shall be subject to the estate or interest created by the deed or mortgage described in the notice of settlement provided the deed or mortgage is recorded within the time that the notice is effective.

This is a reminder that WFG requires that a NOS be recorded for every insured transaction. In addition, a requirement must be included in all title insurance commitments that a NOS must be recorded in connection with the transaction to be insured. Furthermore, if the closing is delayed, so that it is possible that the NOS may expire before the recording of the documents to be insured, a second NOS must be recorded before the expiration or discharge of the first NOS. **N.J.S.A. 46:26A-11d**. The following requirement, or one similar, is required in all commitments:

“The company requires that a Notice of Settlement in connection with the transaction to be insured be recorded, pursuant to N.J.S.A. 46:26A-11 et. seq., as nearly as possible to, but not more than, sixty (60) days prior to the anticipated date of recording of the closing documents. If the closing is postponed, another Notice of Settlement must be recorded prior to the expiration of the first recorded Notice of Settlement. If both a deed and a mortgage are to be insured, two (2) Notices must be recorded; one for the deed and the other for the mortgage.”

Some counties require the recording of two separate NOS where there is to be a conveyance and a mortgage, but others do not. In addition, many lenders require the recording of a NOS as part of their closing instructions.

The statute permits the NOS to be signed by “a party [to the transaction] or party’s authorized representative or a licensed title insurance producer...” **N.J.S.A. 46:26A-11b**. However, the Notice must be acknowledged if executed by anyone other than an attorney-at-law of New Jersey. **N.J.S.A. 46:26A-11b**. The form of the Notice is set forth in the statute.

The duration of a NOS is 60 days from the date of recording. **N.J.S.A. 46:26A-11d**. To claim the protection afforded under the statute, please be aware that the deed and/or mortgage, as the case may be, must be recorded within the time that the NOS is effective (i.e. must be recorded within the 60 day period).

The statute provides for a **Discharge of Notice of Settlement**, so that the record may be cleared when a transaction fails to close. **N.J.S.A. 46:26A-11e**.

Finally, please be mindful that the NOS is not intended to relieve a party from his or her obligations when a pre-closing continuation search reveals a lien or adverse claim or if they receive actual notice of same; rather, its purpose is to protect *bona fide* purchasers and mortgagees from intervening liens or other matters which could not have been disclosed through a reasonable search of the public records. Thus, if a lien or other adverse claim is revealed by a pre-closing continuation search, they must be disposed or otherwise dealt with prior to or at closing, **regardless of whether it appeared of record before or after the filing of a Notice of Settlement**. In other words, you should not ignore or omit a lien or other adverse claim found in the bring down or otherwise made known to you simply because a NOS was recorded before the filing of that lien or adverse claim.

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.**