

WFG Underwriting Bulletin



To: All New Jersey Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: January 24, 2024
Bulletin No: NJ 2024-01
Subject: Insuring Titles Derived Through Tax Sale Foreclosures – Updated Underwriting Requirements in Light of Recent NJ Appellate Court Decision

On December 4, 2023, in the case titled *257-261 20th Avenue Realty, LLC v. Alessandro Roberto*, the New Jersey Appellate Division affirmed the decision of a lower court to vacate (legally void) a tax sale foreclosure judgment based on the holding in the US Supreme Court case of *Tyler v. Hennepin County*, a Minnesota case from 2023, and also on New Jersey Court Rule 4:50-1(f). Like in the Tyler case, the NJ court found that the taking of a property owner's equity, through a tax sale foreclosure pursuant to New Jersey tax sale law, which is similar to Minnesota's law, violates the Fifth Amendment Takings Clause. The Court also found that the lower court did not abuse its discretion in vacating the final judgment under Rule 4:50-1(f) based on the substantial credible evidence presented.

This recent decision, coupled with the New Jersey Supreme Court's Notice to the Bar issued on July 12, 2023 ([NJ Notice to the Bar July 12 2023](#)) in response to the Tyler decision temporarily suspending the Office of Foreclosure from recommending final judgment in tax sale certificate matters filed after May 25, 2023, has compelled WFG to reconsider our requirements for insuring any property derived from any type of tax sale foreclosure. Unless this decision is reversed or revised by a higher court, which is unlikely in our opinion, or until the NJ legislature revises the tax sale laws appropriately, (a few bills are pending in this year's legislative session), the following requirements must be complied with until further notice by WFG:

1. WFG will not insure titles derived through any type of tax sale foreclosure during the statutory 3-month redemption periods under NJSA 54:5-87 (3 months from the date of the judgment in in-personam actions) or under NJSA 54:5-104.67 (3 months from the date of the recording in the county recording office in in-rem actions).
2. The general rule is that an Abstract of Proceedings, (a/k/a "Chancery Abstract") is required for all types of foreclosures, including any type of tax sale foreclosure, when a foreclosure has occurred within the last 20 years. If there are multiple foreclosures found in the chain of title we only require a Chancery Abstract be obtained for the most recent foreclosure action.

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.

This requirement to obtain Chancery Abstracts can be waived in some situations when WFG is presented with a Current Owner's Policy. Please contact underwriting to confirm if a particular Owner's Policy will be acceptable for your transaction.

3. The following requirements and exceptions must be included in all commitments and policies insuring titles derived through any type of tax sale foreclosure:

On Schedule B-I on the Commitment, as a **Requirement**: **"Proof is required that the owner whose interest was divested by the foreclosure is no longer in possession of the land insured. "**

[An appropriate Affidavit usually satisfies this requirement.]

On Schedule B-II on the Commitment and Schedule B on the Policies, as an **Exception**:

- **"Consequences of the entry of an Order re-opening or vacating the final judgment pursuant to New Jersey Court Rule 4:50, or otherwise."**

[This exception must remain on any policy issued (lender's and owner's) and **may not** be omitted from any policy issued until further notice from WFG.

- If any right of the United States is affected by the foreclosure: **"Right of redemption of the United States pursuant to 28 U.S.C. §2410."**

[This exception may be omitted 120 days following the date of the sheriff's sale if the sole interest of the U.S. is a Federal Tax Lien; otherwise, may be omitted one (1) year following the date of the sheriff's sale.]

- If insurance is requested to be provided to a party other than the party who actually foreclosed (i.e. a subsequent conveyance after the foreclosure), the following exception must be included: **"Policy does not insure against consequences of any attack on the estate or interest insured herein under any Federal Bankruptcy Law or any State creditor's rights or insolvency law."**

- Sometimes the foreclosure documents will only contain reference to a tax map and not a street address or a metes and bounds description as required by the Court Rules. If only a tax map reference was used in the foreclosure action, the following exception is required: **"Due to existing variations between the tax map and record descriptions, policy only insures those lands in common to both."**

- Please remember that all covenants, conditions, restrictions and easements existing on the land carry through unaffected by the tax sale foreclosure (i.e. affordable housing restrictions remain, even if it indicates that they expire upon a foreclosure.)

This Bulletin supersedes and replaces [Bulletin NJ 2016-08: Insuring Title Derived through Tax Sale Foreclosures – Underwriting Requirements](#) .

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