

WFG Underwriting Bulletin



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

From: WFG Underwriting Department

Date: July 22, 2019

Bulletin No.: NM 2019-01

Subject: 2019 New Legislation | Legislative Update

Effective July 1, 2019

I. HB 379 - Acequia Property Liens from Magistrate Court and District Court Judgments

Section 73-2-26, N.M.S.A (Actions for the Collection of Assessments -- Lien) has been amended to allow Acequia and Community Ditches to obtain a lien on property pursuant to **magistrate** and district court judgments. The lien shall be effective from the date of filing a certified copy of the judgment (if obtained from a magistrate court), or a transcript of judgment (if obtained from a district court).

Please note that this statute now provides for liens in connection with **magistrate** court judgments (associated with assessments owed to Acequia and Community Ditches).

Please require a release of judgment in connection with both district court and magistrate court judgments/transcripts of judgment (associated with Acequia and Community Ditches).

II. HB 293 (Section 1) – Recording Duplicates and Actual Authority in Connection with Business Entities

Section 14-8-4, N.M.S.A (Acknowledgement Necessary for Recording – Exceptions -
- Recording of Duplicates) has been amended to change the requirements for filing and recording duplicates of instruments by adding the following provisions:

- “D. *If an original instrument of writing is unavailable but, if it were available, could be filed and recorded in accordance with this section, a duplicate of that instrument shall be accepted for filing and recording if accompanied by an affidavit executed pursuant to this subsection. The affidavit shall:*

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The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.

- (1) provide the name, phone number and mailing address of the affiant;
- (2) provide information regarding the execution of the instrument, consideration paid, delivery or other information establishing that the original instrument, if it were available, would be entitled to be recorded pursuant to Subsection A of this section;
- (3) specify the reason the duplicate is filed and recorded in place of the original instrument;
- (4) include a statement that the duplicate is a true and correct copy of the original instrument; and
- (5) be acknowledged and made under oath confirming that the statements set forth in the affidavit are true and correct and of the personal knowledge of the affiant.

E. The filing of a duplicate instrument in accordance with Subsection D of this section shall not incur a fee in addition to the fee, if any, charged for filing an original instrument. When the clerk records the instrument, the grantor and grantee shall be those of the duplicate instrument and the name of the affiant shall be indexed under miscellaneous information.”

Please require an affidavit that complies with the terms of Section 14-8-4, N.M.S.A. to record a duplicate instrument. Please obtain approval from WFG’s underwriting counsel when relying on a duplicate instrument.

III. HB 293 (Section 3) – Actual Authority for Specified Persons in Business Entities to enter into Real Property Conveyance and Encumbrances

A new section of Chapter 47, Article 1, N.M.S.A. (Actual Authority -- Representatives of Business Entities -- Exception) has been enacted to define (with some exceptions) what persons/offices/positions shall have authority to execute conveyance instruments and contracts for the transfer or encumbrance of real property owned by a business entity. Said persons/offices/positions (as defined by the statute) are listed below:

For a cooperative association	-	president and vice president;
For a professional corporation	-	president and vice president;
For a nonprofit corporation	-	president and vice president;
For a business corporation	-	president and vice president;
For a limited liability company	-	manager, member manager, president and vice president;
For a general partnership	-	partner;
For a limited liability partnership	-	general partner; and
For a limited partnership	-	general partner.

Please note a business entity may **limit** or **expand** the authority provided for above by recording with the county clerk, in the county where the real property is located, a statement reflecting limitations on the persons listed as having authority, requiring multiple persons to exercise such authority or authorizing other officers or positions to have the requisite authority to act to transfer or encumber real property owned by the business entity. The recorded statement shall be binding until the business entity revokes or amends (of record) said statement.

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An instrument or contract for transfer or encumbrance executed without the authority provided by the statute may be relied upon as binding the business entity if the instrument or contract has been recorded for a period exceeding ten (10) years, and said authority has gone unchallenged.

Please review the business entity's underlying documentation (as you always have). If there is a discrepancy between the person(s) authorized in said underlying documentation and the foregoing new statutory sections, please obtain approval from WFG's underwriting counsel before proceeding. Discrepancies may require the recording of a statement with the county clerk.

IV. SB 150 – Homeowner Associations – Amending Disclosure Requirements

Among other changes, Section 47-16-2, N.M.S.A. (Homeowner Associations; Amending Disclosure Requirements, etc.), has been amended as follows:

- (1) Disclosure Statements shall only be valid for sixty (60) days from their creation; and
- (2) an association may impose reasonable charges not to exceed three hundred dollars (\$300) for preparation of a disclosure certificate.

Please verify that all Disclosure Statements are presented within sixty (60) days from their creation. Please request an updated Disclosure Statement if necessary.

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