

WFG Underwriting Bulletin



To: New Mexico Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: June 5, 2023
Bulletin No.: NM 2023-02
Subject: 2023 Legislative Update

The 2023 New Mexico Legislature amended and/or enacted the following legislation that is pertinent to our industry to be effective June 16, 2023 (except where indicated otherwise):

1. **TITLE INSURANCE RATE HEARINGS.** Amended §59A-30-8 NMSA 1978 to require title insurance rate and forms hearings every **three** years, instead of **two** years. The next hearings will be held in 2024. This will decrease expenses for both NMLTA and the OSI.
2. **SCRIVENER'S AFFIDAVITS.** Amended §47-1-57 NMSA 1978 to expand the use of Scrivener's Affidavits to correct minor drafting or clerical errors or omissions in any recorded document, including (among other corrections):
 - a. to add or correct a grantor's or grantee's address; and
 - b. to correct a party's marital status; and
 - c. to add a missing exhibit or addendum; and
 - d. to correct a metes and bounds description or sectionalized legal description; provided that the description shall reference a recorded instrument reflecting the correct metes and bounds description, if available.

Please note: For errors or omissions on a recorded instrument involving real property, the Affidavits shall be executed by only the following:

- a. the attorney who prepared the original document;
- b. the employee of the title insurer or agent who completed the original document;
- c. a NM licensed employee of a title insurer or agent;
- d. a nationally certified or registered land professional who completed the form or provided the legal description for the original document; and
- e. a licensed attorney who examined the title and found discrepancies in the description that appear to be a minor drafting or clerical or omission.

PLEASE NOTE: When insuring title based on a Scrivener's Affidavit prepared by anyone outside of your agency, please contact WFG Underwriting Counsel for approval.

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.

3. **REQUIRING NOTICE OF THE FILING OF MECHANIC'S/MATERIALMAN'S LIENS WITH THE PROPERTY OWNER.** Amended §48-2-6 NMSA 1978 to require notice be given to the property owner. This should minimize seller objections to surprise liens referenced in a commitment.
4. **INCREASE HOMESTEAD EXEMPTION.** Amended §42-10-9 NMSA 1978 to increase the homestead exemption for a personal residence to \$150,000 or \$300,000 if the spouse of the person claiming the exemption died within 2 years of the claim - if the spouse were entitled to the exemption.
5. **IMPROVEMENT SPECIAL ASSESSMENT ACT.** HB 228. (Effective Date: July 1, 2023) This is new legislation authorizing special assessments to finance development and improvements for commercial properties. Upon entering into a special assessment agreement, the county shall record a special assessment lien (with a legal description). Take exception to the lien under Schedule B of the policy, unless a release is provided.
6. **REGIONAL WATER SYSTEM RESILIENCY ACT.** SB 1. (Effective Date: July 1, 2023) This is new legislation authorizing the creation of regional utility authorities, which are political subdivisions of the State. The authority must file a plat in the county clerk property records designating the initial service area. The board of the authority will establish rates, fees and charges. Until paid, all rates, fees and charges constitute a lien on the property, subservient to a primary mortgage lien (this term is not defined, but we assume it means a first mortgage). Furthermore, the authority may shut off and discontinue service for unauthorized connections.

Therefore, agents should:

- a. determine if the subject property is within the authority area;
- b. verify that the rates, fees and charges are not delinquent; and
- c. prorate the charges, as you would city water and sewer.

If you have questions or concerns regarding any of the above legislation, please contact Christopher Cullen, New Mexico Underwriting Counsel at nmlegal@wfgtitle.com or (505) 988-7114.

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.