



## UNDERWRITING BULLETIN

**FROM:** Underwriting Department

**DATE:** August 26, 2014

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

**BULLETIN No.:** NM – 2014-06

**SUBJECT:** INSURING CONSTRUCTION LOANS

This bulletin provides a recap of the recent New Mexico Title Insurance Regulations and WFG National Title Insurance Co. underwriting guidelines regarding title insurance for construction loans.

### 1. 2014 Order of the Superintendent of Insurance

a) Delete NM 3, Construction Loan Policy and NM 18 and 19 Endorsements "A" and "D" to Construction Loan Policy. However, if you have issued a policy for a construction loan with broken priority, you may continue to issue the NM 18 Endorsement with each draw on the loan until the loan is fully funded or the policy has expired.

b) Delete the Pending Disbursement Clause from §13.14.7.19 NMAC and the NM 22, Pending Disbursement Down Date Endorsement.

c) Amend §13.14.7.19 NMAC to add a provision for a loan policy with a two-year claims made limitation to insure a construction loan mortgage or deed of trust for a premium of \$30 plus \$1/\$1,000.

d) Amend §13.14.7.14(B)&(C) NMAC to promulgate the new NM 83 Construction Loan Endorsement, NM 83.1 Construction Loan Direct Payment Endorsement or NM 83.2 Construction Loan Insured's Direct Payment Endorsement, which may be issued with the policy. The NM 84 Disbursement Endorsement may be issued thereafter .

### 2. Insuring Construction Loans

Under §48-2-5, NMSA, mechanic's liens do not have priority over a mortgage or deed of trust that is recorded prior to the commencement of construction or delivery of materials. If any work is done or materials delivered before the recordation of the mortgage, then all mechanic's liens filed in connection with the improvement will have priority over the mortgage, regardless of when the work is done.

There are two ways to provide coverage against mechanics' liens:

**1. PRIORITY.** If you determine that the construction loan mortgage or deed of trust has priority over mechanics' liens, you may delete Standard Exception 4 from the loan title insurance policy, without issuance of a construction loan endorsement. The determination of priority should be made by an inspection and photograph of the subject property immediately prior to recordation of the mortgage. If the lender requests down date endorsements upon draws, you may issue the NM 84 Disbursement Endorsement.

**2. LOSS OF PRIORITY.** If you have unusual circumstances (such as a major remodel of an existing improvement) or it appears that priority has been broken, contact WFG Underwriting Counsel before proceeding. Do not delete standard exception 4. If WFG determines that the risk is acceptable, it will instruct you as to which of the NM 83 (ALTA 32-06) series endorsements you should issue with the policy. The coverage amount will increase upon draws and the new date of coverage will be reflected in the NM 84 Disbursement Endorsements, which will be required with any of the NM 83 (ALTA 32-06) series endorsements.

**NOTE:** This Bulletin is intended for use by title issuing offices, title insurance agents and approved attorneys of WFG National Title Insurance Company and any reliance by any other person or entity is unauthorized. This bulletin is intended solely for the purpose of underwriting policies of WFG National Title Insurance Company.