



## UNDERWRITING BULLETIN

**FROM:** Underwriting Department

**DATE:** March 31, 2014

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

**BULLETIN No.:** NM – 2014-01

**SUBJECT:** INSURING TITLE BASED ON FORECLOSURES

Foreclosures are always high risk events in any title. Good title practice requires a careful review of the documentation and court files, if any, before insuring a title that is based on a foreclosure of any lien. Any defects encountered in the foreclosure review must be shown on any preliminary report, binder, commitment or policy. These practices and requirements are not new and have always been part of an adequate search and examination of any title based on a foreclosure, however, the recent New Mexico Supreme Court holding in *Bank of New York v. Romero* requires even closer scrutiny. **(See paragraph 3c below)**

WFG will insure titles based on foreclosures based on the following general guidelines:

### 1. Direct Foreclosure Sales.

Provided that the guidelines below have been followed, and upon careful review of the foreclosure sale and related documentation, WFG will insure either foreclosure sales where the foreclosing lender is the successful bidder or transfers by the foreclosing lender to related parties as well as good faith purchasers at the foreclosure sale.

### 2. Sales and Mortgages from Foreclosure Purchaser.

Provided that the guidelines below have been followed, and upon careful review of the foreclosure sale and the related documentation, WFG will also insure arm's-length sales and mortgages (or deeds of trust) from parties who acquired title in or through a foreclosure to unrelated third parties for full value. This includes so-called REO sales from the foreclosing lender who "bought back" the title at foreclosure or from a related transferee. **NOTE: If the foreclosed borrower regains title after foreclosure, any liens wiped out by the foreclosure will reattach to title.**

### 3. General Guidelines.

a. Compliance with all applicable state-specific requirements under local statutes, regulations, case law and WFG underwriting guidelines.

b. All appeal and redemption periods must have run. The right of redemption begins to run upon entry of the order approving the sale. The statutory right of redemption is 9 months, but may be reduced to one month by agreement of the parties. Review the order for foreclosure to determine the redemption period.

c. Carefully exam the foreclosure documentation, including the court file. It is crucial that you confirm that the foreclosing party clearly has the right to foreclose in accordance with local law and practice. Where the foreclosing lender is the original lender of record, **be sure the court file contains the original note or an attorney affidavit that the lender or counsel is in possession of the original note.**

**If the foreclosing lender is not the original lender, be sure an assignment of mortgage has been recorded. Also, you must determine that the foreclosing party was not only the assignee of the mortgage lien, but also the holder of the original note with a proper endorsement from the assignor as of the date of the complaint.**

**Verify that all relevant parties are properly served and either appeared or were properly defaulted for failure to appear. Any irregularities should be brought to the attention of your New Mexico WFG Underwriter.**

d. If the sale price exceeds the amount of the debt foreclosed (using the face amount of the mortgage or deed of trust as a rough benchmark) plus any subordinate liens extinguished by the sale by more than 25%, please contact your New Mexico WFG underwriter.

e. Deletion of Standard Exception 1: The premises must be vacant other than for tenants lawfully in possession and not in default of rental payments or any other terms or conditions of the tenancy and for whom exception will be taken in Schedule B of the title insurance policy. Affidavits and/or physical inspections are necessary to delete standard exception 1 under Schedule B of the policy. If the seller can't or won't sign a possession affidavit, require one from the realtor or buyer, or do not delete standard exception 1.

Deletion of Standard Exception 4: Frequently, following a foreclosure, the seller has never seen the property and cannot or will not sign a mechanic's lien affidavit. Depending on when the foreclosed borrower vacated the property, we may be able to take an affidavit from the seller that no work has been done since the special master's deed was filed. The realtor may be able to sign that no work was done within 120 days that could result in a mechanic's lien. If we cannot obtain such assurance from anyone, do not delete standard exception 4.

Deletion of Standard Exceptions 2 and 3: The seller may not be willing to sign a survey affidavit and we may require a new survey to delete standard exceptions 2 and 3. A new survey will not be required if the buyer signs an affidavit that the prior survey appears to show all current improvements.

f. If a bankruptcy appears to be involved, then the relevant bankruptcy documents must be reviewed. If you have any questions about the effect of those documents on the foreclosure at issue, please review them with your local WFG underwriter.

#### **4. Foreclosures in the Back Chain of Title.**

Finally, we will continue to insure sales and mortgages from parties whose titles are derived from a prior foreclosure in the chain of title, provided there are no known issues relating to the prior foreclosure that could affect the validity of the foreclosure **and** there is an existing title insurance policy covering the title of the seller or borrower. If there is no prior policy, contact your New Mexico WFG Underwriter.

**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.**