

WFG Underwriting Bulletin



To: All New York Policy Issuing Agents of WFG National Title Insurance Company
From: Underwriting Department
Date: January 18, 2016
Bulletin No. NY 2016-01
Subject: Recent Legislation Affecting NYS Mortgage Foreclosure Actions.

In an effort to remedy the problem of abandoned “Zombie” homes in New York State, the legislature as part of the recent budget bill, enacted several significant changes to the procedures for the foreclosure of residential properties in New York. These Changes are effective as of December 20, 2016. The amendments are quite extensive and we have noted those changes related directly to the insurability of title.

1. Expedited Judgment of Foreclosure and Sale:

- If a borrower is delinquent pursuant to new RPAPL section 1308 the holder of a first mortgage on residential property is required to inspect the property within 90 days and if found to be vacant, the mortgagee has a duty to secure and maintain the property. It is obvious then that the lender will want to dispose of the property as soon as possible.
- New RPAPL section 1309 allows the plaintiff to move for immediate judgment of foreclosure and sale on the grounds that the property is vacant and abandoned. The application cannot be made until the defendant’s time to answer the complaint has expired. This additional application must be served on the defendant mortgagor, regardless of whether the defendant filed an answer or appeared in the action. The statute also requires the application state in bold letters, notice of the application for an expedited judgment as outlined in the statute.
- The motion must be supported by an affidavit and other proofs as outlined in the statute. The judgment shall not be entered if the mortgagor or any other defendant has filed an answer, appearance or other written objection that is not withdrawn or has otherwise demonstrated an intention to contest the foreclosure action.
- This procedure eliminates the requirement for an order of reference, the referees report of the amount due and the mandatory settlement conference (CPLR 3408)
- The property shall not be deemed vacant and abandoned where there is a building under construction, renovation or rehabilitation, is used on a seasonable basis but is otherwise secure, subject to a probate action, damaged by natural disaster but the owner intends to repair and reoccupy or occupied by the mortgagor, a relative or lawful tenant.

2. Changes in procedure for Non-Expedited Foreclosures:

- The language in the notices required by RPAPL sections 1303 (pre-foreclosure notice) and 1304 (You Could Lose Your Home) (Now You May Be At Risk Of Foreclosure) has been revised to include, among other things, a statement that the mortgagors do not have to leave the home and are required to maintain the property.
- New CPLR section 3408 allows a defendant who did not file an answer in the foreclosure but appeared at a settlement conference under this section will have a 30 day extension to file an answer in a foreclosure action.
- RPAPL section 1351 has been amended to add a requirement that a property be sold within 90 days of the date of judgment of foreclosure. The law does not specify if this is from the date the judgment is executed or the date it is entered.
- RPAPL section 1353 has been amended to require that if the property is sold to the plaintiff (or its affiliate) in the foreclosure action they must place the property back on the market within 180 days of execution of the deed of sale or within 90 days of the completion of construction, renovation or rehabilitation, whichever comes first.

The amendments are quite extensive, and we have noted those changes that relate directly to the insurability of title. When reading a title if there are violations of the new procedures in the foreclosure action please contact underwriting counsel and we will make decisions on a case by case basis.

Please contact underwriting Counsel with any questions.

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.