



## UNDERWRITING BULLETIN

**FROM:** Underwriting Department

**DATE:** March 31, 2014

**TO:** All North Carolina Policy Issuing Agents of WFG National Title Insurance Company

**BULLETIN No.:** NC – 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.

WFG will insure titles based on foreclosures based on the following general guidelines to be supplemented by state-specific guidelines:

### 1. Direct Foreclosure Sales.

Provided that the careful review foreclosure sale and related documentation has been done, WFG will insure either foreclosure sales where the foreclosing lender is the successful bidder or transfers by the foreclosing lender to related parties. We will not insure other successful bidders at the foreclosure.

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

Provided that the careful review of the foreclosure sale and the related documentation has been done, 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.

### 3. General Guidelines.

- a. Compliance with all applicable state-specific requirements under local statutes, regulations, case law and WFG underwriting guidelines.
- b. In states where applicable, all appeal and redemption periods must have run.
- c. There must be a careful examination of the foreclosure documentation, including the court file if it is a judicial foreclosure, with particular emphasis on confirming that the foreclosing party clearly has

the right to foreclose in accordance with local law and practice and 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 local 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 local WFG underwriter.

e. 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. Depending on the state, affidavits and/or physical inspections will be necessary.

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.

As noted in item 3 e. above, there have been significant issues in several markets where the foreclosed parties or others are in actual possession of the property. Since none of us want to be involved in an eviction proceeding, please make sure that the property is vacant or identify who is in possession and take the appropriate exception. Verification of possession takes on a special importance with foreclosed properties. Again, neither agent nor underwriter is well-served by litigation over matters that could be addressed prior to closing.

**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.**