

WFG Underwriting Bulletin



To: All Ohio Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: October 19, 2023
Bulletin No.: OH 2023-03
Subject: ORC 5301.256 aka "Ohio Save our Farmland and Protect our National Security Act"

Background:

The State of Ohio enacted ORC 5301.256 aka the Ohio Save our Farmland and Protect our National Security Act, effective October 6, 2023. This legislation presents significant challenges to the title insurance industry due to multiple State and Federal Constitutional issues as well as great ambiguity in its definitions and overall statutory scheme.

"The Act" prohibits certain countries, groups and individuals and/or their agents/alter-egos from acquiring title to Ohio "agricultural land" after October 6, 2023. Violation of this Act may result in "escheatment" (forfeiture) to the State of Ohio and a judicial sale pursuant to ORC Chapter 2329 (Foreclosures, generally).

The Ohio Secretary of State is charged with maintaining a list of the prohibited countries, groups and individuals. This list is pulled from five lists maintained by the Federal Government. The first three lists consist of countries and certain named groups. These are not searchable other than by looking for the name. The last two lists are Federal lists of persons, entities and groups that are "Specially Designated Nationals and Blocked Persons" (SDN) and are searchable. (Basically, the same names/groups/entities that make up the database for a Patriot Act Search. See [WFG National Bulletin NB 2014-02](#).)

Full text of the legislation may be found here:

[ORC 5301.256](#)

The Ohio Secretary of State's "List" may be found here:

[ORC 5301.256 Prohibited List](#)

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.

Underwriting Guidelines:

Search:

1. Conduct a "Patriot Search" as you normally would.
2. You do not have to search the Ohio Secretary of State's "List" unless you agree to do so as part of your Closing Instructions.

Policy Forms:

1. Use 2021 Policy Forms for "agricultural land":

When the Land being insured is what you would traditionally think of as "agricultural" use, it is strongly recommended that you issue the ALTA 2021 Owner's and Loan Policies for the transaction. While the 2006 ALTA Owner's and Loan Policies contain Exclusions from Coverage that address the loss of title/lien through the State of Ohio's "escheatment", these Exclusions are more clearly stated in the 2021 Policy Forms.

2. Homeowner's Policy:

Do not issue a Homeowner's Policy on a parcel of land which is larger than 5 acres.

The ALTA Homeowner's Policy contains different Exclusions from the ALTA Owner's Policy. As a consequence, we are forced to adopt a parcel size limitation due to the arbitrary, capricious, ambiguous and vague definition of "agricultural land" contained in ORC 5301.256.

Please recall that there must be a 1-4 family residence located on the land and the buyer must meet the definition of "Insured" contained within the Homeowner's Policy.

3. Title Guaranty:

You may issue an Ohio Title Guaranty on "agricultural land". The Title Guaranty is a guaranty of the record title only. As such, loss of title under ORC 5301.256 is beyond the scope of its guaranty.

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“Escheated Land”:

Do not issue a policy on any real estate which has been sold pursuant to the “escheatment” described in ORC 5301.256 unless you are able to obtain a deed(s) from the prior owner(s) and actual releases are filed for any lien(s) that existed when the “escheatment” was filed.

ORC 5301.256 was passed as part of the State of Ohio’s Budget Bill. As a result, it may violate the Ohio Constitution’s “One Subject Rule” which requires all matters contained in a legislative bill to have the same subject matter.

Additionally, ORC 5301.256 may violate various provisions of the U.S. Constitution.

These litigation risks make insuring a title derived from ORC 5301.256 inherently risky, time consuming, and unprofitable unless deeds and releases are recorded to cure any potential risks.

“Judicial Commitment” and Escheatment Proceedings:

Do not issue a “Judicial Commitment” for the use of the State of Ohio (Ohio Attorney General) in an “escheatment” lawsuit filed pursuant to ORC 5301.256.

A “Judicial Commitment” aka a commitment with “judicial commitment endorsement” may be issued for use in foreclosure of “commercial” real estate pursuant to ORC Chapter 2329. Because this product may result in the issuance of an Owner’s Policy to the purchaser at an “escheatment” sale, you are not authorized to issue this product for use in a proceeding under ORC 5301.256.

You may issue a Preliminary Judicial Report/Final Judicial Report for use in a proceeding under ORC 5301.256. The constitutional questions that prohibit us from issuing a title insurance policy and the loss of title that may result are beyond the scope of the PJR/FJR’s guaranty.

Conclusion:

As always, contact Underwriting with your questions.

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