**WFG Oregon Underwriting Bulletin 2013-3**

**WFG National Title Insurance Company**

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**Date:** December 4, 2013

**To:** WFG Oregon Title and Escrow Employees

**Re:** A Period of Voidability for Trustee’s Deeds Issued after a Non-judicial Foreclosure –House Bill 2929, Effective January 1, 2014

**Bulletin #:** WFG-Oregon-2013-3-MFT

**The Legislation:**

In 2013 the Oregon legislature passed the attached bill, HB 2929, which takes effect as of January 1, 2014, and amends ORS 86.755 on non-judicial foreclosures of deeds of trust. This legislation renders a trustee’s deed voidable for a short time period following a trustee’s sale.

HB 2929 permits a trustee to rescind a trustee’s sale and void a trustee’s deed at any time within 10 calendar days of the date of the trustee’s sale, and to record an affidavit providing notice of the rescission no later than 21 days after the date of the trustee’s sale.  Grounds for such a rescission are:

(A) The trustee asserts that there was a bona fide error in (i) setting, advertising or otherwise specifying the opening bid amount for the property; (ii) providing the legal description for the foreclosed property; or (iii) complying with a requirement or procedure that is required by law.

(B) The grantor and beneficiary agreed to a foreclosure avoidance measure that would postpone or discontinue the trustee’s sale; or

(C) The beneficiary accepted funds to reinstate the trust deed, even if the beneficiary had no legal duty to do so (e.g., perhaps the beneficiary offered the “cure’ less than 5 days before the sale, so that it was technically too late, and yet, the lender accepted the cure.)

The effect of this legislation is that a trustee’s deed cannot be considered reliably final until the 22nd day following the trustee’s sale.

**Title Practice:**

**A: VESTING, IF YOU FIND A TRUSTEE’S DEED OF RECORD:** It is appropriate to vest title in the grantee if you find in a properly recorded trustee’s deed, since the new law certainly does not, by its mere existence, invalidate the trustee’s deed. However, if you are examining title within 21 days following the foreclosure sale or are producing a prelim while a non-judicial foreclosure is underway, set up the exception described below for the possibility of a rescission of the sale.

**B:** **A NEW EXCEPTION FOR PRELIMINARY TITLE REPORTS ON NEWLY FORECLOSED PROPERTIES AND ONES AFFECTED BY A NONJUDICIAL FORECLOSURE IN PROGRESS**:  Beginning January 1, 2014, preliminary title reports issued  while a non-judicial foreclosure is pending or any time within 21 days of a trustee’s sale must show the following exception:

*The right of the trustee to rescind a trustee’s sale at any time within 10 calendar days after the date of the trustee’s sale and to record an affidavit concerning the rescission of the trustee’s deed not later than 21 days after the date of the trustee’s sale, all pursuant to ORS 86.755 (4) .*

**C. ELIMINATING THE EXCEPTION BASED ON PASSAGE OF TIME:** Again,the effect of this legislation is that a trustee’s deed, even though given upon completion of a non-judicial foreclosure of a deed of trust, cannot be considered fully effective until the 22nd day following the trustee’s sale.  It is fine to eliminate the exception once the 21 days has run, if you find no affidavit of rescission recorded during that 21 days, AND you have taken into account how current our title plant is.

* Remember to count the actual date of the sale as day zero.
* Remember, too, that the 21 day time period expires, not on day 21, but on day 22.
* Please, watch your plant date! You need to verify that you have the full 21 days of title records available for review, in case an affidavit of rescission is lurking in the gap. (For example, if the plant date is 5 days behind, you need to wait out the additional 5 days, while checking for any affidavit of rescission.)
* Finally, it never hurts to count twice.

**D. ELIMINATING THE EXCEPTION AFTER DAY 10, BUT BEFORE THE DEADLINE FOR RECORDING AN AFFIDAVIT OF RESCISSION:** Seek approval of a Senior Underwriter in the unlikely event we are asked to insure a lender or a new purchaser on day 11 through 21 following the trustee’s sale. It is possible the trustee might offer acceptable assurances that no rescission was carried out within the 10 day time period, even though the 21-day window for recordation of an affidavit of rescission has not closed. If you have any questions related to this Bulletin, please contact your local WFG underwriting personnel.

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