**WFG Oregon Underwriting Bulletin**

**WFG National Title Insurance Company**

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**Date:** February 24, 2015

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

**Re: 2015 OREF FORM CHANGES**

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As occurs every year, numerous changes were made to the OREF forms for 2015. This Bulletin sets forth the substantive changes that have been made to the OREF Residential Real Estate Sale Agreement (OREF-001) and various other OREF forms. Both the revised sale agreement and forms are attached to this Bulletin.

With respect to the sale agreement, the following revisions have been made:

**1. Section 1**, the Definitions/Instructions section has been expanded. All of the subsections remained the same, other than subsections 4, 5 and 7.

Subsection (4) – An issue sometimes arises as to whether a document is binding. The prior OREF documents merely referred to the moment the document was “signed and accepted” to designate the moment the agreement became binding. In an effort to better clarify for realtors and their clients exactly when the sale agreement becomes a legally binding document, Section (4) was added, stating that, unless seller and buyer expressly provide otherwise, the phrase “signed and accepted” means the date and time that either the seller or buyer has (i) signed their acceptance of the agreement received from the other party or the other party’s realtor, and (ii) transmitted it to the sending party or the sending party’s realtor by manual delivery, fax or electronic mail. This “signed and accepted” change was made throughout the entire sale agreement.

Subsection (5) recognizes that most people no longer mail documents back and forth. It makes it clear that electronic transmission is an effective means of delivery. If either party for whatever reason does not want to use electronic delivery, they can still specify in section 4 of the sale agreement that they want to use the mail or manual delivery only.

Subsection (7) sets forth a significant change. With the exception of the lead-based paint contingency period in Section 16 of the sale agreement, all deadlines for performance now end at 5:00 PM on the last day – and not at midnight as was previously the case.

**2. Sections 3.4 and 3.5** - The next substantive changes deal with insurance issues. Section 3.4 now contains a notification to buyers that lenders may condition a loan on casualty, property and/or fire insurance. Section 3.5 alerts buyers that, if the property is located in a designated flood zone, (i) flood insurance may be required by their lender, (ii) it is important to obtain an elevation certificate if required, since the insurance premium will be based on the home’s elevation above the “base flood elevation”, (iii) such certificates must be prepared by authorized surveyors, engineers or architects, and (iv) the cost for a certificate may range from a few hundred dollars to over $1,000 dollars.

**3. Section 7** - The third change deals with seller-carried financing. The new language in Section 7 replaces the earlier text and goes into much greater detail regarding seller-carried financing. Specifically, it explains the exemptions from the law that otherwise require the involvement of a mortgage loan originator (“MLO”) to offer or negotiate loan terms. It also now provides that the seller has two (2) business days to determine whether to use an MLO, and that the parties then have seven (7) business days to reach written agreement on the terms of the transaction.

**4. Sections 14.1 and 14.2** - The next substantive changes are to the private well and sewage system sections. Section 14.1 now frames the question as to whether the property contains a well more accurately than before by clarifying that it is referring to a well that supplies domestic water for household use. Section 14.2 was added to direct the parties to use new OREF form 081 if an onsite sewage system is located on the property. In addition, Section 3 of the Seller Property Disclosure Statement was amended to add a couple of additional questions regarding sewer systems.

**5. Section 17** - The 5th change was made to section 17 of the sale agreement to address the VA rules on sharing escrow costs. It now provides that escrow costs shall be shared equally between the parties unless otherwise prohibited by VA rules.

**6. Section 21** - The next substantive change deals with seller possession after closing. Most of the original text of Section 21 has been removed, and the parties are now directed to use the separate “Agreement to Occupy After Closing” form (OREF-054) that goes into much more detail about post-closing possession and deposits.

**7. Section 36** - A clarification was made that, if a monetary claim is within the jurisdictional limit of the small claims court (which is currently $10,000), it must stay in small claims court and may not be removed to the circuit court for a jury trial.

In addition, there are a couple of new OREF forms and some additions and revisions have been made to a few of the existing forms. Specifically:

**NEW ATTACHMENT TO SELLER’S PROPERTY DISCLOSURE STATEMENT (OREF-028)**

This is a new form that is to be used in conjunction with the Seller Property Disclosure Form (OREF-020). The Seller Property Disclosure form contains several asterisks (\*) where the seller’s answer is required to be supplemented by additional information. This attachment form is intended to prompt sellers to provide the required additional information.

**REVISIONS TO BACK-UP OFFER ADDENDUM (OREF- 009)**

This form is used when the buyer is in a second or subordinate position to a buyer in first position. There have been substantial revisions to this form – primarily for purposes of clarity. The substance of the protocols remain essentially the same. The only new provision is section 4, which provides a mechanism for either reaching agreement or terminating the sale agreement if the buyer that has been elevated to first position does not feel that it can remove all contingencies by the outside closing date set forth in section 18 of the sale agreement.

**REVISIONS TO AGREEMENT TO OCCUPY AFTER CLOSING (OREF- 054)**

Section (3) now provides alternatives for the payment of rent, including a lump sum at the time of closing or in periodic installments after closing, as well as a late charge if rent is not paid within four (4) days of its due date. Section (5) now states that utilities are to be paid by the seller until possession is turned over to the buyer. New Section (6) addresses whether a deposit is to be paid and, if so, the amount of the deposit and the conditions under which it is to be returned. It also provides that, if the buyer retains any of the deposit because of damages to the property or seller’s default under the agreement, the buyer must promptly provide an accounting to the seller. Finally, it gives the buyer the right to withhold from the deposit an amount equal to the per diem charge payable to the buyer’s lender if the seller does not vacate the property when it is supposed to.

**REVISIONS TO INVESTMENT PROPERTY ADDENDUM (OREF- 070)**

The term “Underground Storage Tanks” has been substituted for the acronym “UST.” The balance of the changes deal with the largely self-explanatory due diligence protocols regarding buyer’s request for records and documents.

**NEW ON-SITE SEWAGE SYSTEM ADDENDUM (OREF- 081)**

This is an entirely new form and is to be used when the property has its own on-site sewage system. The sale agreement now prompts the parties to use this form. In a nutshell, this form:

(i) contains the seller’s representation that the onsite sewage system is operating properly and complies with applicable laws, (ii) states that the seller will provide the buyer with all written documentation regarding the sewage system, (iii) contains a provision allowing the buyer to request that certain inspections, tests, pumping and/or cleaning be performed, and allows the parties to agree whether seller or buyer is to pay for it, and (iv) gives the buyer a time period within which to complete negotiations with seller concerning the onsite sewage system and notify seller of its unconditional disapproval of the system based on any documents or information provided to it. In such an event, the transaction is terminated and all earnest money is refunded to buyer.

**REVISIONS TO THE PRIVATE WELL ADDENDUM (OREF- 082)**

The main purpose of the changes to this form is to clarify that, if the buyer rejects any of the reports or tests, the buyer has an absolute right to terminate the transaction. Previously, if the seller could remedy the issue, the buyer could not terminate and had to stay in the transaction. While the seller does still have an opportunity to try to cure, the buyer does not have to accept that cure and may terminate in spite of it. The form further gives the parties the opportunity to identify who is to pay for what since custom varies throughout the state on this issue.

If you have any questions related to this Bulletin, please contact your local WFG underwriting personnel.

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