**WFG Oregon Underwriting Bulletin**

**WFG National Title Insurance Company**

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**Date:** October 6, 2014

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

**Re: AFFIDAVITS OF HEIRSHIP**

**Bulletin #:** WFG-Oregon-2014-3-RJH

There has recently been some evidence of confusion regarding the circumstances under which WFG may be willing to insure title to a decedent’s real property without either a formal probate or a small-estate affidavit, by accepting an affidavit of heirship. The purpose of this Bulletin is to provide guidance regarding the factors that are taken into consideration in making an underwriting decision as to whether an affidavit of heirship may be used.

**An affidavit of heirship is** a verified statement of the facts surrounding a proposed distribution of real property. It typically sets forth substantially the same information required for a small-estate affidavit, including (i) the date and place of the decedent’s death (with a copy of the death certificate); (ii) a description and the value of the real property to which the affidavit applies; (iii) whether the decedent died testate or intestate (if the decedent died testate, with a copy of the will); (iv) all of the decedent’s heirs and their addresses; (v) the creditors of the estate and the amounts owed to them; and (vi) a statement that there are no monies owing to the Oregon Department of Human Services.

**The purpose of the affidavit of heirship is** to substantiate the right to receive real property from a decedent’s estate. The affidavit of heirship itself is not a transfer document, but merely substantiates the interests of the heirs or devisees. The affidavit is combined with an agreement that indemnifies WFG against any liabilities or costs arising out of the falsity or inaccuracy of any statement made in the affidavit.

**Affidavits of heirship present an extra-hazardous risk to WFG** since they expose the company to potential liability to omitted heirs (via self-serving affidavits that omit heirs) as well as to creditors of the decedent who are not paid. In addition, unlike probated property, there are no statutory bona fide purchaser protections that apply when affidavits of heirship are relied upon.

For that reason, any use of such affidavits requires underwriting approval. **The factors underwriting personnel will take into consideration** **in making an underwriting decision include the following:**

**1. Is there a will?** If so, does it indicate any potential problems, such as a family member being disinherited or other messy intra-family issues? If such problems are present, the likelihood of approving the use of an affidavit of heirship decreases. Likewise, if there is no will (i.e., intestacy), approval is less likely.

**2. Are all of the heirs and devisees ascertainable and agreeable to signing both an affidavit of heirship as well as any deed transferring the property in question?** If even one heir or devisee refuses to cooperate, there will need to be a probate to cut off his or her rights in the real estate.

**3. How many heirs or devisees are there?** If one person is the sole heir or sole devisee, the situation is usually straight forward. Difficulties result when the parties and issues multiply. In any event, WFG must be able to determine the heirs with certainty. If any of them are minors, disabled (without a valid guardian), undetermined, or disputed, or if all of the heirs or devisees are not willing to sign the affidavit of heirship and/or deed, probate proceedings will be needed to resolve the issues raised thereby.

**4. How many creditors are there?** The concern is that there is no way to get creditors to “sign off” on an affidavit of heirship, and that concern is heightened with an increase in the number of creditor claims against the property or the decedent. If there are more than one or two such creditors, probate proceedings will likely be needed to properly sort out the numerous claims.

**5. Is an attorney involved to guide the heirs or devisees through the proper and thoughtful completion of the affidavit of heirship?** Approval is more likely when that is the case. Also, because of the significance of the affidavit and our potential liability for engaging in the unauthorized practice of law, WFG personnel should not prepare these affidavits or provide a “form” affidavit to customers (who may then take it and not consult an attorney about their duties in completing it) without prior underwriting approval.

In the event that, after taking all of the foregoing into consideration, WFG does decide to accept an affidavit of heirship, because of the enhanced risk there is a **mandatory extra risk premium** of 100%, 50%, or 25% of the normal rate, depending on whether the sale occurs within six years after the decedent’s death, six to fifteen years after death, or more than fifteen years after death, respectively.

**Special Note:** It may not always be in the parties’ best interests to proceed without probate. Matters concerning heirs and devisees themselves, such as incompetency, minority, and judgments and bankruptcies of record, are problems when title transfers pursuant to an affidavit of heirship. In such cases, a full probate may be the most efficient and cost-effective way (and sometimes the only way) to pass clear title.

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

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