**WFG Oregon Underwriting Bulletin**

**WFG National Title Insurance Company**

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**Date:** November 18, 2013

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

**Re: JUDICIAL FORECLOSURE SALES – INSURING IN OREGON**

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There has recently been some evidence of confusion regarding the judicial foreclosure process in Oregon, the legal effect of certain documents issued in connection therewith, and/or the rights of the parties involved in that process. The purpose of this Bulletin is to provide standard guidelines for insuring judicial foreclosure sales in Oregon.

WFG is willing to insure title in a purchaser after a judicial foreclosure of an Oregon deed of trust or mortgage, subject to the following conditions:

1. You should **verify that all necessary parties were named and served in the foreclosure** action. To the extent that they have interests of record that may be eliminated by the foreclosure, necessary parties are:

- The owner of the mortgaged property.

- The mortgagor or, if deceased, his or her personal representative and heirs. If the mortgagor has filed bankruptcy and neither the property has been released from the bankruptcy nor relief from automatic stay granted, the duly appointed bankruptcy trustee is a necessary party.

- Junior lienors, such as second mortgagees, judgment creditors, mechanic’s lienholders, and governmental taxing authorities with tax or other liens.

- All owners of subordinate interest in the mortgaged property, such as purchasers, tenants or holders of easements, reversionary interests, remainder interests or restrictive covenants.

- Persons in possession of the mortgaged premises.

If you determine that the legal owner of the property or the heirs of a deceased mortgagor were not made parties defendant, you should contact an underwriter since such omission renders the judgment invalid.

If you determine that any other necessary party, such as a junior lienor, was omitted, the judgment is not rendered invalid, but you should include in the preliminary report and policy an exception for the lien and equitable redemption rights of such omitted party. (Please note: Equitable redemption rights exist for 5 years following the date of a sheriff’s deed, so the right of an omitted junior lienor would expire at that point. The 90 day statutory redemption period does not even begin to run unless and until a necessary party is joined in the foreclosure action.)

1. You should **verify that there is a final, non-appealable judgment of foreclosure**. If so, even though the judgment technically extinguishes the lien of the foreclosed mortgage/deed of trust as of the date the judgment is entered, the mortgage/deed of trust should not be removed from the preliminary report but should continue to be shown, together with the judgment itself, until the statutory redemption period discussed below has expired.
2. You should **either include an exception for the rights of parties in possession of the property or verify that no parties are, in fact, in possession**, since the rights of such parties may not have been extinguished by the foreclosure. For example, the federal Protecting Tenants at Foreclosure Act and similar Oregon state law allow tenants in possession to remain in possession under a prior lease under certain conditions.
3. You should **determine whether the foreclosed property has been conveyed to the purchaser at the foreclosure sale by sheriff’s deed or if such purchaser merely holds a certificate of sale**.

- If there is a recorded sheriff’s deed, fee title may be shown as being vested in the foreclosure purchaser, as would be the case with any other deed.

- If, however, the purchaser only holds a certificate of sale, the purchaser does not yet have legal title to the property. All the purchaser has is a right to possession of the property until a sheriff’s deed is executed and delivered to the purchaser, subject to certain statutory exceptions to that right of possession. Until the issuance of a sheriff’s deed, legal title remains in the mortgagor in the form of his or her statutory redemption right.

- The purchaser is not entitled to a sheriff’s deed (and the resulting legal title) until the statutory redemption period has expired, unless the purchaser acquires the rights of all parties entitled to redeem before such period expires and applies for and obtains an early sheriff’s deed. Acquired redemption rights typically show up as recorded assignments of redemption rights or as quit claim deeds running to the party who is acquiring those rights.

- The statutory right of redemption in Oregon exists following every judicial foreclosure unless the estate foreclosed is a lease with an unexpired term of less than two years. The persons entitled to redeem are (i) the judgment debtor or mortgagor or their heirs, devisees, or grantees who have acquired legal title to all or any part of the property, and (ii) a junior lien creditor who claims a lien on all or any part of the property by mortgage/deed of trust, judgment or decree.

- The redemption period for those in category (i) above is 180 days after the date of the foreclosure sale, and the redemption period for lien creditors is 60 days after the date of the foreclosure sale or the last redemption by another lien creditor.

 If a junior lien runs to the IRS, a judicial foreclosure of a senior mortgage or deed of trust foreclosure gives rise to a 120-day redemption period, and, if a junior lien runs to another federal agency, there is an extraordinarily-extended one year period of redemption. The U.S. will sometimes give a waiver of its redemption rights or otherwise document its agreement that a property may be sold free and clear of its lien and redemption rights. As with other junior lienholders, the United States must be given proper and timely notice of the foreclosure, if it is to be bound by the foreclosure decree or to have statutory redemption periods begin to run.

- **Therefore, if the purchaser at a foreclosure sale only holds a certificate of sale, you should (i)** continue to show the mortgagor as being vested in fee title, **(ii)** show the certificate of sale in the preliminary report, **(iii)** include an exception for the redemption rights of all parties entitled to redeem under Oregon law, **and (iv)** not close the transaction until legal title has been conveyed to the purchaser by means of a sheriff’s deed.

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

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