**WFG UNDERWRITING BULLETIN**

**Bulletin No.: Or/Wa 13-001 MFT**

**Yes, Some Major Lenders are Forgiving Second Deeds of Trust**

**BACKGROUND:**

In the early months of 2012, five banks entered into a historic $8.5 M settlement agreement with state and federal regulators regarding claims of foreclosure abuse. Alleged improprieties include a) the signing of foreclosure paperwork outside the presence of a notary and without actual knowledge of the trust or falsity of representations made in that paperwork, aka “robo-signing”, and b) the “dual tracking” of borrowers, so that even while borrowers were pursuing mortgage modifications with one department of their bank, another department was proceeding with a foreclosure.

The five major lenders who entered into this settlement agreement are: Wells Fargo, Bank of America, J.P. Morgan Chase, CitiMortgage, and Ally/GMAC (whose loans have largely been transferred to Ocwen Mortgage or GreenTree Servicing).

**NEW TREND-Debt Forgiveness, especially on Seconds**

Included in the National Mortgage Settlement are provisions that give a lender monetary credit against its obligations for each dollar of first or second mortgage indebtedness a lender forgives. According to a recent article in the New York Times Times “[t]he five banks covered under last year’s settlement are wiping out second mortgages in record numbers.”

Several of our escrow offices have begun to see “debt forgiveness” letters like the one below:

*"We are pleased to inform you that we have approved your home equity account for participation in a principle forgiveness program offered as a result of the Department of Justice and State Attorneys General global settlement with major servicers, including [BANK].*

***"You will receive a full forgiveness of the remaining principle balance of $51K on your home equity account.****Then means that you no longer owe this amount, and we will also waive any outstanding fees and interest accrued."  
  
"Your acceptance of this offer is automatic unless we hear from you".  
  
"Also, once we forgive the remaining balance on your home equity account, we will report to the major credit bureaus that your account was paid and closed".*

**RISKS AND CHALLENGES FOR TITLE AND ESCROW: WFG POLICY**

1. **The bank’s letter does not discuss reconveyance of the deed of trust**. Without a reconveyance, the lien remains of record and will be, at minimum, a cloud on title.
2. **The bank’s letters are offers, and no more than offers.** A borrower may bring us the bank’s offer, but decide NOT to accept the offer. (Reasons for opting out might include such things as concerns about taxable debt relief or in order to keep a credit line open.)
3. **A supposed bank letter might not be authentic, but a phony instead, presented by a scammer.**

**WFG POLICY**:

a. To limit exposure on risks 1, 2, & 3 escrow is to contact the lender and document that the lender is indeed offering to fully forgive the identified loan, that bank records show the borrower has agreed to be part of the debt forgiveness program, and to arrange for a request for reconveyance of any deed of trust we will be asked to remove as an exception form title policies to be issued. We do want that request for reconveyance in hand at the time of closing.

b. To limit risk of fraud, the lender contact should be clearly identifiable as a genuine bank representative who is reached through verifiable bank phone numbers or email addresses. The bank documents generated by your inquiry, including the request for reconveyance, should keep us safe from scammers.

c. Obtain written escrow instructions from the borrower, so we can document their directives that a loan be cancelled and the trust deed securing it be reconveyed. WFG’s form instruction is attached.

1. **The borrowers may be thrilled about the debt relief, but have excellent questions regarding the program, its impact on their credit rating, or their responsibilities to the IRS.**

**WFG POLICY:** Remember that WFG is merely a neutral escrow agent who cannot give legal or tax advice. I am seeing a discussion of the tax implications of the forgiveness program on the debt relief offer letters themselves and on lender web-sites, often under FAQ headings, and it is fine to refer borrowers to those basic informational resources.