**WFG Oregon Underwriting Bulletin**

**WFG National Title Insurance Company**

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**Date:** September 28, 2015

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

**Re: TRANSFERS TO TAX-EXEMPT GOVERNMENTAL ENTITES**

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By way of background:

1. Under Oregon law, (i) publicly-owned property is exempt from property taxes, (ii) property that is taxable on July 1 remains taxable for the entire tax year (July 1 – June 30), and (iii) property that is exempt from taxation on July 1 remains exempt for the entire tax year.
2. When property owned by a taxable owner is sold or otherwise transferred to a tax-exempt owner (i.e. a governmental entity or agency or instrumentality of the government), there are sometimes property taxes and other charges that are or will become payable but have not yet been paid. These delinquent taxes remain a lien on the property and continue to accrue interest charges. However, since the governmental entity now has title to the property the county cannot foreclose on the property. The delinquent property taxes therefore remain on the tax rolls but essentially cannot be collected.
3. Evidence was presented to the Oregon legislature that (a) public and private entities recognize this loophole, (b) property is being transferred knowing there are delinquent taxes that are a matter of public record, and (c) there is little if any incentive for either party to ensure that legally-assessed property taxes are paid prior to the sale.

In response, the legislature passed HB 2127, which adds a new provision to ORS 311.370 and addresses the problems described above in several ways:

First, the bill prohibits a county clerk from recording a deed conveying fee title or other instrument contracting to convey fee title to a governmental body whose property is tax exempt under ORS 307.040 or 307.090 unless the instrument is accompanied by a certificate signed by the county assessor, stating that all “charges against the real property” (i.e. taxes, fees, interest, penalties, costs and other charges that have been or will be assessed against the property) have been paid. This is a new form that is being developed by the Oregon Department of Revenue in conjunction with the county assessor offices. If all charges have been paid against the property as of the date of recording, the assessor is required to issue the certificate and may not unreasonably withhold delivery thereof.

Second, on or after July 1 and before the date on which the assessor certifies taxes, any person seeking to record a deed conveying fee title or other instrument contracting to convey fee title to a governmental body whose property is tax exempt must pay to the county tax collector the exact amount of charges against the real property that are owing or, if the tax collector cannot compute the exact amount, an amount equal to the assessor’s estimate of the exact amount.

Third, if written instructions are received from the seller, title companies and attorneys may withhold from the sales proceeds an amount equal to the charges against the real property as of the date of the conveyance. Such amounts are then deemed held in trust for the applicable taxing district and must be paid by the title company or attorney to the county tax collector before any sales proceeds are paid to the seller.

Lastly, any tax amounts that are not paid and are therefore left as delinquent do not constitute liens on the property but are deemed to be a personal debt of the seller and can be collected from the seller in the same manner as delinquent personal property taxes.

ACCORDINGLY, IF YOU HAVE A TRANSACTION THAT IS SUBJECT TO THIS NEW LAW:

1. Contact the applicable county assessor’s office as early as possible to obtain the assessor’s certificate that all charges against the property have been paid. That certificate must then be given to Recording to record with the deed or other instrument contracting to convey fee title.
2. If all charges against the property have not been paid, (A) obtain a written payoff amount from the applicable county assessor’s office as well as written instructions from the seller authorizing you to withhold from the sales proceeds the payoff amount and pay that amount to the county, (B) inform the applicable county tax assessor’s office that you have received such instructions and authorizations from the seller, (C) obtain from the assessor’s office the assessor’s certificate, which may be conditioned on your payment of the payoff amount to the county at closing, (D) provide the certificate to Recording to record with the deed or other instrument contracting to convey fee title, and (E) pay the payoff amount to the applicable county tax collector before any sales proceeds are paid to the seller.

**PLEASE NOTE THANT THIS NEW LAW GOES INTO EFFECT AS OF NEXT MONDAY, OCTOBER 5, 2015.**

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

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