**WFG Oregon Underwriting Bulletin**

**WFG National Title Insurance Company**

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**Date:** October 23, 2013

**To:** All Title and Escrow Personnel

**Re:** 2013 Legislative Update

The following summarizes those bills of interest to the title insurance industry that were passed during the 2013 Oregon legislative session.

**HB 2417 - Document Recording Fees for Veterans Housing**

Increases from $15 to $20 the fees charged and collected by county clerks to record or file certain real property documents pursuant to ORS 205.130 (which includes deeds, mortgages, liens, assignments and powers of attorney). The reason for the increase is to provide additional funding for emergency rent assistance, building or rehabilitating housing, and down payment assistance for veterans. Effective: 1/1/2014.

**HB 2528 - Lender Collections**

Removes the $100,000 cap on the amount in a real estate loan agreement that is subject to the requirement that lender pay interest to borrower on funds that lender collects for lender's security protection provision (i.e. tax and/or insurance escrow accounts). Effective: 1/1/2014.

**HB 2568 – Amended Notice of Sale Requirements**

Applies to all issuances of notices of sale, amended notices of sale, and notices of postponed trustee’s sale for foreclosure sales conducted pursuant to non-judicial foreclosures.

For notices of sale, the law removes various references to “conducting the sale”, where that phrase modified trustee, attorney or an agent, to clarify that the party doing the act addressed in each provision of the law does not have to be the same party who conducts the trustee’s sale.

For notices of postponed trustee’s sale, the law allows the notice delivery options applicable to the original notice of sale in lieu of requiring personal service of a postponement of sale notice. This includes the provision that the notice of postponed trustee’s sale may be “mailed by both first class and certified mail with return receipt requested.” The law retains all other postponement notice requirements, such as who must receive a postponement notice (grantor and occupants who may be residential tenants), the 15-day advance notice requirement, and ability to postpone once for no more than 2 days without giving the written postponement notice.

For rescheduling a sale date following bankruptcy stay, the law now requires that the amended notice of sale state *only* those defaults that existed on the date on which the stay was terminated (i.e., the amended notice of sale following a bankruptcy stay my exclude defaults cured during bankruptcy and include defaults arising during bankruptcy and remaining uncured after the stay is lifted). The law also allows a minimum of 60 days to postpone a sale date set after the stay is lifted, regardless of the portion of the 180-day period allowed for postponement that remained on the day the bankruptcy stay was imposed. For example, if the grantor declared bankruptcy one (1) day before a sale scheduled on the 180th day, the beneficiary has a 61-day window in which to conduct a re-noticed postponed trustee’s sale. These are new subsections governing how to reschedule when a bankruptcy stay is lifted. Effective: 1/1/2014.

**HB 2569 – Trustee’s Signatures**

Adds law practice to list of entities eligible for appointment as trustee of trust deed. Authorizes attorneys who are part of trustee law practice or who share law practice with trustee attorney to sign documents. Specifies statement attorney signing on behalf of trustee must make on signed document. Clarifies definition of law practice. Effective: 1/1/2014

**HB 2662 – Foreclosure Neglect, Good Neighbor Bill**

Prohibits residential property owners who took title by judicial or non-judicial foreclosure from neglecting property and requires such owners to post contact information on the house and give such information to the local government or neighborhood association. Additionally, should neglect or nuisance arise on the property, the local government may require the owner to remedy the situation. If the owner does not provide a timely remedy, the local government is authorized to address the nuisance and attach a lien against the property for costs incurred. Effective:  6/6/2013.

**HB 2822 – Judicial Foreclosure Posting**

Amends ORS 18.924. Requires sheriff to post notice of execution sale of real property on website for at least 28 days, and publish notice in newspaper in county where real property is located weekly for 4 consecutive weeks. Requires that both newspaper and website notices include names of parties subject to writ of execution, street address or tax lot number of property, and date, time and place of sale. Requires website notice to include legal description of property. Provides that sheriff is not required to post notice of sale until sheriff receives required information from judgment creditor. Applies to execution sales on or after August 1, 2013. Effective: 6/24/2013.

**HB 2856 – Mortgage Loan Originator Licensing Exemption**

Allows exemption from mortgage loan originator’s licensing requirement for individual who offers or negotiates terms for no more than three residential mortgage loans during any twelve-month period, unless specified as mortgage loan originator by federal law. Provides that person may not claim exemption if person holds more than eight residential mortgage loans at one time. Effective: 9/3/2013.

**HB 2929 – Trustee Rescission of Sale**

Amends ORS 86.755. Establishes specific circumstances in which trustee may rescind sale. Permits trustee to rescind trustee’s sale within 10 calendar days only if (i) trustee asserts that bona fide error occurred in setting, advertising or otherwise specifying opening bid amount during trustee’s sale, in providing correct legal description of property, or in complying with a requirement or procedure imposed by law, (ii) grantor and beneficiary agreed to foreclosure avoidance measure that would postpone or discontinue trustee’s sale, or (iii) beneficiary accepted funds to reinstate trust deed and obligation.

Requires trustee to provide notice of rescission within 10 calendar days after date of trustee’s sale. Specifies contents of notice. Requires trustee to record affidavit that trustee provided required notice of rescission. Requires trustee to refund purchase price to purchaser within three calendar days after date of notice. Provides that trustee must maintain registered agent and registered office continuously in this state and file statement that identifies registered agent and shows address of registered office. Effective: 1/1/2014

**HB 3172 – Residential Septic System Disclosure**

Amends ORS 105.464. Modifies provisions relating to septic systems in seller’s required disclosure statement for sale of real property. Revises the disclosure statement as it relates to sewage systems and includes inquiries into the repair history of on-site septic systems, septic pumps, sand filters, locations of septic system components, and whether a service contract is required for the system. Effective: 1/1/2014

**HB 3389 – Residential Foreclosures**

Introduces new law that facilitates the ability of non-profit 501(c)(3) entities that comply with certain rules to acquire residential properties in foreclosure by short sale and rent them back to the former grantor under certain defined limits and restrictions. Prohibits beneficiary from requiring as condition of short sale, except in certain circumstances, that non-profit entity that purchases property in short sale or that purchases note from beneficiary, enter into an “arm’s length affidavit” with beneficiary or grantor that limits or bars grantor from owning or occupying residential property after short sale. Specifies that certificate of compliance required to foreclose trust deed must be valid and unexpired at time notice of default is recorded.

In addition, under current law, if the borrower is living in a home as a primary residence at the time of the default, the borrower is protected from a deficiency judgment. This bill changes the definition of a “residential trust deed” to turn on whether the house was owner-occupied when the trust deed was recorded or, for a purchase money mortgage, if the grantor, grantor’s spouse or grantor’s minor or dependent child(ren) intended the house to be their principal residence at the time the trust deed was recorded. Effective: 7/19/2013.

**HB 3489 – Escrow Agent Definition**

Allows Real Estate Commissioner to suspend, revoke or deny escrow agent licensure if person acts as collection agency or provides debt management service or money transmission without required license. Allows Commissioner to suspend, revoke or deny licensure if person assists person without license to act as collection agency or provide debt management service or money transmission. Limits escrow agent’s exemption from licensing requirements in instances where escrow agent provides debt management services, money transmission services, or services to debt management service providers that must be licensed.

Note: In 2009, the Legislative Assembly enacted House Bill 2191, which brought debt management service providers under Department of Consumer and Business Services (DCBS) regulation and oversight. DCBS reports that some entities that provide collection or debt management services have obtained escrow licenses, as escrow agents are exempted from the requirement to register as a debt collector or debt management service provider. HB 3489 clarifies which actions by an escrow agent are not considered the actions of a collection agency or debt management service provider by specifying that escrow agents acting in closing or collection of escrow accounts, or serving as a trustee of a trust deed, are not considered collection agencies or debt management service providers. Effective: 6/18/2013.

**SB 465 – Flood-Related Damage**

Authorizes local government to record notice of substantial damage with county clerk when residential structure sustains substantial flood-related damage and does not comply with hazard area ordinances. Requires local government to void such notice by recording remedy when structure is brought into compliance with applicable ordinances. Exempts section from affecting pre-existing common law or statutory rights or remedies, including actions for fraud, negligence or equitable relief. Applies to substantial damage occurring before, on or after effective date of Act. Effective: 6/4//2014

**SB 558 – Resolution Conference Prior to Foreclosure**

Requires residential trust deed beneficiary to request resolution conference prior to foreclosing residential trust deed. Provides exemption for lenders who performed in the aggregate less than 175 judicial and non-judicial foreclosures in the preceding calendar year so long as they submit annual affidavit to the Attorney General. Specifies required contents of request. Allows grantor to request resolution conference in certain circumstances. Allows beneficiary to request resolution conference while maintaining exemption. Specifies timeline and other requirements for resolution conference and participating parties.

Requires beneficiary to notify Department of Justice and grantor if found ineligible for foreclosure avoidance measure, within 10 days of determination with certain information. Makes certain beneficiary violations of law an unlawful trade practice. Establishes maximum fees for beneficiary and grantor. Directs Attorney General to adopt rules and take certain other actions to implement program. Aligns liability and confidentiality of facilitator with current law for mediators. Repeals provisions of existing law superseded by measure. Requires Attorney General to make available draft rules at least 30 days before operative date.

Note: In 2012, the Legislative Assembly enacted Senate Bill 1552, establishing the residential Foreclosure Avoidance Mediation Program under the direction of the Attorney General. That measure requires the beneficiary of a residential trust deed to enter into mediation with a homeowner who has received notice of foreclosure, but only applies to non-judicial foreclosures. The 2012 law also specifies steps for the homeowner to request mediation with a beneficiary when the homeowner is at risk of foreclosure. Foreclosure data suggests that beneficiaries have largely halted non-judicial foreclosures and have instead opted to file suits to foreclose in court, called “judicial” foreclosures. This bill expands the existing foreclosure mediation program to include judicial foreclosures and makes changes to the structure of the mediation program. Effective: 8/4/2013.

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

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