

## UNDERWRITING BULLETIN - TEXAS

No. 01

DATE: May 7, 2010

RE: General Underwriting Guidelines

The purpose of this initial Bulletin is to provide concise summaries of WFG's underwriting positions in areas which have generated a substantial volume of questions to underwriters.

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### **Abstracts of Judgment**

1. No authority is given to insure around an AJ, except in the following situations:
  - a. A rate/term refinance of a purchase money lien; or,
  - b. A HEL where the AJ (whether one or more, in the aggregate) does not exceed \$10,000.00.
2. Whenever an AJ is held by the United States, contact Underwriting.
3. If a customer claims that an AJ does not attach because the property is his homestead, he has two solutions:
  - a. Contact the judgment creditor and convince them that the AJ does not attach, and obtain a partial release; or,
  - b. Utilize the procedure found in Sect. 52.0012 of the Texas Property Code. Note that this procedure is time consuming, so it must be commenced well in advance of the anticipated closing. Additionally, it applies only if the AJ was filed on or after September 1, 2007. Use of this procedure to remove an AJ must be approved by Underwriting.
4. Bankruptcy Issues:
  - a. If the seller is still making payments under a Chapter 13 Plan, we will require a partial release of the AJ. The reason for this requirement is that the AJ remains a valid lien on the property until the Plan is paid in full.
  - b. If the seller was previously in Chapter 7 bankruptcy, an AJ was wiped out by the bankruptcy only if:
    - i. The seller received a discharge;
    - ii. The AJ creditor was listed as a creditor in the bankruptcy; and,
    - iii. The property was scheduled as exempt property in the bankruptcy.



## **Ad Valorem Tax Sales**

1. We will insure the purchaser at an ad valorem tax sale if:
  - a. Each owner of the property at the time the tax suit was filed was individually named and personally served with process (no service by publication or by mail and no “unknown heirs”);
  - b. No prior owner, or anyone claiming through a prior owner, is in possession; and,
  - c. All statutory time periods for redemption or to otherwise challenge the judgment or the sale have expired (these periods are longer than the redemption periods):
    - i. Two years from the date of the tax sale if the property was the residence of the taxpayer at the time the suit was filed; or,
    - ii. One year from the date of the tax sale in all other cases.

## **Bankruptcy**

1. When a buyer or borrower is in bankruptcy, contact Underwriting.
2. The relationship between AJs and Bankruptcy is addressed under “Abstracts of Judgment”.

## **Bankruptcy – Sales Free and Clear**

1. An order approving a sale free and clear is subject to appeal for 14 days after it is entered, which is generally the day it was signed by the judge.
2. Although the order might recite that it is not subject to the automatic stay imposed by Rule 6004[h]), meaning that the order is effective immediately, we will not insure until the appeal period has run.
3. Do not insure any transaction within 14 days of entry of a Bankruptcy Court order without written approval from Regional Underwriting.

## **Child Support Liens – Limitations**

1. For a CSL first filed on or after May 26, 2009, the CSL constitutes a lien on real property until the 10<sup>th</sup> anniversary of the date on which the CSL was filed with the county clerk. The CSL may be renewed for subsequent 10 year periods by filing a renewed CSL. If the renewed CSL is filed before the prior CSL expires, the renewed CSL takes the priority of the prior CSL.
2. For all CSLs filed before May 26, 2009, there is no limitations period.



## **Child Support Liens - Releases**

1. No authority is given to insure around a CSL, except in a rate/term refinance of a purchase money lien.
2. If a customer claims that a CSL does not attach because the property is his homestead, he has two solutions:
  - a. Contact the CSL claimant (usually the AG's office) and convince them that the CSL does not attach, and obtain a partial release; or,
  - b. Utilize the procedure found in Sect. 157.3171 of the Texas Family Code. Note that this procedure is time consuming, so it must be commenced well in advance of the anticipated closing. Additionally, it applies only if the CSL was filed on or after September 1, 2009. Use of this procedure must be approved by Underwriting.

## **Contracts for Deed**

1. We will insure as follows:
  - a. Show the contract buyers and sellers as insureds on the OP, followed by "as their interests may appear";
  - b. Require that the contract be filed for record;
  - c. Take exception to the terms and conditions of the contract for deed on Schedule B; and,
  - d. Search and prepare the commitment as if this was a sale transaction.

## **Home Equity Loans**

1. Please follow the "overlimits" procedure when handling a HEL in excess of \$250,000.00. The form is available from Underwriting or Agency.
2. We accept POAs on HELs, but only between spouses.
3. It is not required that the borrower mortgage their entire homestead in a HEL transaction, but what they do mortgage must include the residence and there must be access.
4. Any coverage in the T-42.1 endorsement may be deleted. If the lender wants the "subsection l" coverage of the T-42.1 endorsement, any change whatsoever in the HUD will require that the closing be postponed at least until the next day. It is up to the lender if it wants to waive the coverage and close "today".
5. We will not insure a HEL unless we can give all of the coverages in the basic T-42 endorsement.

### **Homesteads – Disclaimers**

1. An affidavit in which someone merely disclaims a homestead interest in identified property is not sufficient for title insurance purposes. The affiant must not only disclaim, but must also designate the property which at that time constitutes the homestead. The Affidavit can be obtained from Underwriting or Agency.
2. “A purchaser or lender for value without actual knowledge may conclusively rely on an affidavit that designates other property as the homestead of the affiant and that states that the property to be conveyed or encumbered is not the homestead of the affiant.” Art. XVI, Sect. 50(d), Texas Constitution.

### **Independent Executors – Power of Sale**

1. An IE has the power of sale if the Will expressly grants the IE the power of sale.
2. An IE has the power of sale if the Will expressly grants the IE all the powers of a trustee under the laws of the State of Texas.
3. An IE has the power of sale if the sale is being made by the IE for the purpose of paying debts of the estate.
  - a. You should require a notarized Affidavit from the IE setting out the names of the creditors, the amounts owed, and declaring that the IE will use all or part of the proceeds of the sale to pay the debts.
  - b. You may, if you choose, pay the debts directly out of escrow.
    - i. If a lender is involved, get written permission from the lender to do this.
  - c. The grantor in the deed should be: “John Doe, Independent Executor of the Estate of Richard Roe, Deceased, pending in the Probate Court of Any County, Texas, Cause No. 12345, acting for the purpose of paying debts of the Estate”.
4. Even where the IE has the power of sale, contact Underwriting if the property being sold was specifically devised in the Will to someone other than the IE. We may want to require consent from the devisee(s).

### **Independent Administrators – Power of Sale**

1. If the Order appointing the IA grants the power of sale, we will honor the court’s Order.
2. If the Order does not grant the power of sale:
  - a. We require compliance with the “4 step process”; or,
  - b. The sale must be made for the purpose of paying debts of the estate.

### **Intra Family Sales**

1. If the property is the seller’s homestead, contact Underwriting for guidance.



2. When the seller claims the subject property forms no part of his homestead, the seller must be able to give us a Homestead Designation and Disclaimer (demonstrating that he owns, occupies and claims other property as his homestead). The form can be obtained from Underwriting or Agency.

### **Minerals**

1. Underwriting will review on an individual basis any request to remove a mineral lease based on a non production affidavit; approval will not be routinely granted.
2. We will give the mineral coverage on the T-19 or T-19.1 in these situations:
  - a. When the land is in a residential platted subdivision, or is unplatted but does not exceed 1 acre; or,
  - b. When the land is unplatted and exceeds 1 acre and either:
    - i. All mineral interest owners have waived their surface rights, or,
    - ii. The current owner (or buyer in a sale transaction) has or will acquire at least 75% of the minerals; or,
    - iii. A drilling ordinance prohibits drilling.
3. We prefer but do not require that commitments contain one of the global mineral exclusion/exception clauses found in Procedure Rule 5.1. Upon request by the customer, we will consider removing the clause in these situations:
  - a. The agent has a complete plant from at least 1900;
  - b. The agent has conducted a mineral search; and,
  - c. The agent itemizes all mineral grants and reservations on Schedule B.
4. If the Agent chooses to issue commitments without a Rule 5.1 clause, the Agent must satisfy items 3(a) through 3(c).

### **Non Judicial Foreclosures – No Construction**

1. We will insure the purchaser at a non judicial foreclosure sale if:
  - a. The foreclosing lender was a commercial lender who obtained a title policy when the lien was created;
  - b. At least 120 days has expired since the foreclosure;
  - c. No legal action to contest or set aside the foreclosure has been commenced;
  - d. The prior loan was not a construction loan;
  - e. The prior owner has not filed a petition in bankruptcy;
  - f. The new policy will not exceed the amount paid at the foreclosure; and,
  - g. The property is vacant.

### **Non Judicial Foreclosures – Construction**

1. We will consider insuring the purchaser at a non judicial foreclosure sale where the original loan was a construction loan if:



- a. All requirements under “Non Judicial Foreclosure – No Construction” are met; and,
- b. The agent submits the Agent’s Request for Authorization and the Supplemental Questionnaire (Post Foreclosure Sale). The forms are available from Underwriting or Agency.

### **Notary – Identification**

1. A Texas notary may not acknowledge a signature unless the person presents a valid (not expired) identification issued by the United States, the State of Texas, or any of the other 49 states, which ID contains a photograph and a signature.
2. If the person does not present such an ID, a notary may instead attach a jurat to the document, provided the ID which was presented is sufficient to convince the notary of the signor’s identify.
3. A document is recordable regardless of whether an acknowledgement or a jurat is attached. However, if a lender is involved, the use of a jurat instead of an acknowledgment on any document requires the lender’s written consent.

### **Pending Litigation**

1. Never close if litigation is pending regarding the property or the parties.
2. Litigation is “pending” so long as any party still has the right to file a motion for new trial, a motion to modify the judgment, or an appeal. The mere entry of a judgment does not terminate the litigation.
3. Even though a *lis pendens* has been released, the underlying suit must still be reviewed to determine whether the closing should proceed.
4. Contact Underwriting regarding any of these issues.

### **Pipeline Easements**

1. We will remove a blanket pipeline easement from a commitment if:
  - a. The surveyor can state in writing that the pipeline does not affect our property; and,
  - b. The surveyor can locate the pipeline on other property.

### **Powers of Attorney**

1. When submitting a POA for approval, send a completed POA Request form at the same time. The form is available from Underwriting or Agency.
2. On a home equity, we will accept a POA only if it is between spouses.
3. We do not accept POAs on reverse mortgages.

## **Reverse Mortgages**

1. We do not accept POAs on reverse mortgages.
2. A reverse mortgage may be used to pay off a HEL.
  - a. It is not a refinance; the reverse mortgage does not take the priority of the old HEL. Any intervening clouds must be addressed.
3. We may insure a reverse mortgage within 12 months after a prior HEL or a prior reverse mortgage.
4. We may insure a reverse mortgage even if there is an unreleased HEL of record which you are not paying off.

## **Survey Coverage – Covered Risk**

1. The Owner Policy (T-1) contains the following as a Covered Risk:

“1.(c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term “encroachment” includes encroachment of existing improvements located on the Land onto adjoining land, and encroachments on the Land of existing improvements located on adjoining land.”
2. When issuing an OP, Covered Risk “1.(c)” should be deleted unless the agent has been presented with an acceptable survey. In the absence of such a survey, the following should be added as a Schedule B exception: "Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. In the event of a conflict between this exception and Covered Risk ‘1.(c)’, this exception shall control.”
3. We do not require that the additional exception in the preceding paragraph be inserted on a Loan Policy (T-2). Most lenders would object to it, and the additional risk presented is minimal on an LP.

## **Surveys**

1. You may give the lender the survey amendment or issue the T-19 when an improvement encroaches into a utility or drainage easement or a building set back line, provided the encroachment is no more than 20% into the area.
2. On an OP, always take exception to all encroachments shown on the survey, even if we are giving the survey amendment. We never insure over known survey problems on an OP. When we give an owner survey coverage, all we are doing is insuring that there are no survey issues other than those already shown on the survey.
3. Always call Underwriting when an improvement encroaches on a property line.



4. We have no set time limit on accepting old surveys. If the survey is otherwise reliable, we will consider accepting it without regard to when it was prepared. Always remember to get the appropriate affidavits signed whenever you agree to use a survey from an earlier transaction.
5. You may issue the T-19 and T-19.1 without a survey, provided all survey coverages in those endorsements are deleted. Contact Underwriting for assistance.

### **Transfer Covenants and Freehold Licensing**

1. Whenever an examination reveals an instrument which imposes a charge upon the subsequent transfer of title, exception should be taken in item B-1 as well as in a separate, additional Schedule B item which references the particular document; this applies to the commitment and the policy. It is the underwriter's position that the policy will not provide any coverage as to this type of risk.
2. We suggest the following specific exception language be used:

*"Any lien securing any obligation to collect or pay a fee upon the transfer of title to the Property described on Schedule A, including but not limited to the following: (describe the doc in question with recording data). This policy does not insure against, and the Company excepts from coverage under this policy, all loss or damage due to the failure to pay any fees or amounts, however characterized: (a) on any prior transfers of title, (b) on the current transfer of title, and (c) on any future transfers of title. In the event of any conflict between this item and any other provisions of this policy or its endorsements, this item shall control."*

3. The agent may, if it chooses, undertake the escrow risk of collecting the fee and disbursing it to the proper party.

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