

UNDERWRITING BULLETIN - TEXAS

No. 03

DATE: October 8, 2010

RE: Providing Tax Coverages

Taxes in General

1. For many years, the general rule was that a title company could not insure that taxes for a particular year had been paid unless (1) all taxes were paid prior to closing, or (2) all taxes were collected and paid by the title company at closing. The recent changes to Rule P-20 provide new options for tax coverages.

Owner's Tax Reserve/Escrow Account With A Payoff Lender

2. As evidence that all taxes have been assessed and paid, the title company may rely on the records of the owner's reserve/escrow account which show that the taxes have been paid by the current lender. [P-20A1(b)1] The company should retain the evidence of payment in its file.

Comment: If the tax collector still shows taxes due, but the owner's escrow account has been debited in the correct amount and the lender provides evidence that taxes which correlate to the owner's loan number have been paid, you may insure taxes as paid.

3. In the absence of satisfactory evidence, the company may accept an indemnity from a responsible party together with a deposit of funds in an amount sufficient to pay the taxes. [P-20A1(b)2]

Comment: WFG's position is that evidence of payment is "satisfactory" only if it conclusively establishes that the taxes have been paid.

Comment: If the borrower's escrow account has been debited, but the lender cannot provide any evidence that the taxes have been paid, we do not have "satisfactory" evidence. We can insure that taxes have been paid only upon receipt of an indemnity and cash escrow.

4. The company shall use the escrowed funds to pay the taxes before they become delinquent, or, it may hold the funds pending receipt of satisfactory evidence that the taxes have otherwise been paid. Once evidence of payment has been received, the company shall pay the escrowed funds to the proper party. [P-20A1(b)3]

Comment: The title company may pay the taxes, or hold the funds in escrow pending receipt of satisfactory evidence of payment.

Comment: Note that an indemnity alone is not sufficient; it must be accompanied by a deposit of funds.



5. If all taxes for the current year have not been assessed by the taxing authorities, the company may not insure that taxes for the current year are paid. [P-20A2]

Rollback Taxes

6. A title company may delete the rollback clause from the tax exception on a Loan Policy or an ICB, but never on an Owner Policy or Residential Owner Policy.

7. The roll back coverage can be given only if:
- (1) the taxes for the current year are not based on an agriculture or open space valuation [P-20B2(a)] or,
 - (2) (a) the rollback has been triggered and all authorities have assessed roll back taxes,
(b) the company collects the rollback taxes at closing, and,
(c) the company will pay the rollback taxes in the regular course of business.
[P-20B2(b)]

Comment: WFG's opinion is that the rule does not permit giving rollback coverage based on an indemnity, with or without a deposit of funds.

Taxes Not Yet Due and Payable (Full or Partial Coverage)

8. This affirmative coverage may be given on a Loan Policy or an ICB, but never on an Owner Policy or Residential Owner Policy.

9. The full coverage may be given only if none of the taxes, standby fees and assessments for the year the policy is dated are due and payable.

Comment: WFG considers taxes to be due and payable when they have been assessed and billed to the taxpayer.

10. If some but not all of the taxing authorities' taxes, standby fees and assessments are due and payable, the coverage may be modified as follows: "Company insures that standby fees, taxes and assessments by any taxing authority for the year ___ are not yet due and payable, as to [insert name(s) of the authority whose taxes, etc., are not yet due and payable]." [P-20C2]

11. The premium is \$5.00, regardless of whether the company is giving the full "not yet due and payable" coverage, or just partial coverage. [R-24]

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