

UNDERWRITING BULLETIN - TEXAS

No. 04

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RE: Insuring Title After Foreclosure

Recent Events

All of us in the title insurance industry are aware of the news stories that have circulated recently about the validity of foreclosures. WFG believes that the risk of litigation and loss because of the actions of foreclosing parties should be borne by the foreclosing parties themselves, not by the agents examining titles or by the underwriters insuring titles. Most of the publicized problems arose in states which require that mortgages be foreclosed judicially. Although judicial foreclosure is an option in Texas, almost all liens securing loans against real estate here are deeds of trust which are foreclosed non-judicially. Nevertheless, it is prudent that we review and revise our procedures for insuring titles after foreclosure.

General Examination Guidelines

1. We will not insure the title of someone who was the purchaser at a foreclosure sale; we will not insure until there is a subsequent arms length sale.
2. Always leave the 'rights of parties in possession' exception in the commitment/policies. You may remove this exception when requested by the proposed lender. You may remove this exception when requested by the proposed buyer only upon compliance with Rule P-3, which allows the agent to make a reasonable charge for inspecting the property.

Note: If the buyer wants the exception removed, and you do not want to inspect the property, you may remove the exception if the buyer signs the attached "Affidavit Regarding Parties in Possession."

3. Review the Appointment of Substitute Trustee; contact Underwriting if you believe the Appointment was signed by someone other than the mortgagee, the mortgage servicer, or an attorney authorized by the mortgage servicer.

Note: The "mortgage servicer" is the last entity to whom a debtor has been instructed by the current mortgagee to send payments; the mortgagee and the mortgage servicer may be the same entity.



4. You may accept as true the recitals contained in an affidavit or incorporated into the substitute trustees' deed. The recitals should cover the following:

- A Notice of Sale was posted at the courthouse door of each county in which the property is located, at least 21 days before the sale;
- A copy of the posted Notice of Sale was filed in the office of the county clerk of each county in which the property is located, at least 21 days before the sale;
- At least 21 days before the sale, the servicer sent written notice of the sale to each debtor who is obligated to pay the debt, according to the records of the servicer; the notice was sent by certified mail to the debtor's last known address, according to the records of the servicer.
- The property was sold between the hours of 10:00 AM and 4:00 PM, and the sale commenced not later than 3 hours after the earliest time stated in the Notice of Sale;
- If the property was the debtor's residence, the servicer served written notice of default on the debtor, at the debtor's last known address according to the records of the servicer, and the debtor was given at least 20 days to cure the default before the debt was accelerated and notice of sale was given;
- The debtor was alive at the time of the foreclosure; and,
- The debtor was not on active military duty at the time of the sale, or within 9 months prior to the sale.

If you have reason to believe that any recital is inaccurate, please contact Underwriting before proceeding.

Transactions With a Foreclosure in the Back Chain

5. We will also insure subsequent sales and mortgages by parties who acquired title from a foreclosure sale purchaser, provided (1) your exam does not uncover any foreclosure related issues and (2) the seller or borrower has an existing owner policy. If no prior policy is available, contact Regional Underwriting for guidance.

Bruce L. Goldston
Vice President and Regional Counsel