

WFG Underwriting Bulletin



To: All Texas Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: February 22, 2016
Bulletin No. TX 2017-02
Subject: Fraudulent Foreclosure Scheme

The purpose of this Bulletin is to alert you about a fraud scheme which has surfaced in several states; so far as we know it has not been seen in Texas.

The scheme begins with what appears to be a valid foreclosure where the property is sold to a Third Party. Third Party, now in title, brings a subsequent sale to your office. You examine, determine that the foreclosure appears in order, and you insure the subsequent sale.

The root of the scheme is that there was never a foreclosure at all. In fact, the borrower may not even have been in default. The only thing real about the foreclosure is the paper trail placed of record. In truth, there was no default, no acceleration, no notice, no posting and no auction on the courthouse steps. The trustee's deed is a fake. The buyer you insure will get no title and the new lender, if there is one, will get no lien.

Some types of foreclosures are more prone to this type of fraud scheme:

LOW RISK

1. A low risk is when you have a non-judicial foreclosure with a nationally known lender (Bank of America, Chase, etc.) and the foreclosure was handled by one of the known Texas foreclosure law firms.
2. Another low risk situation occurs when you have a non-judicial foreclosure with a "local" lender known to you and the foreclosure was handled by counsel known to you.

MEDIUM RISK

3. These files would include non-judicial foreclosures handled by an individual or a lawyer who is a stranger to foreclosures in your county or when the lender is either an individual or is not a known commercial lender.

Suggestion: Verify with the lender that the lien was foreclosed and require the lender to provide you with the notice and demand documentation, including the green card from the certified mail.

HIGH RISK

4. A High Risk occurs when your exam reveals a foreclosure of any type in the chain within the last 2 years but there is no deed of trust of record which could have been foreclosed. This is a huge red flag.

Suggestion: Contact Underwriting for guidance.

Remember to leave the “rights of parties in possession” exception on Schedule B of all post foreclosure commitments. We will generally remove this from the lender’s policy upon request but not from an owner policy unless we have reliable evidence that the prior owner is not still in possession. For this evidence you can rely on an inspection by your own personnel, by a real estate agent, by the new lender or by any other third party you trust. No special form or report is required but you need something in writing attesting that the property is vacant; retain the document in your file.

It is never possible to anticipate every scenario and no attempt to do so is made in this Bulletin. Do not hesitate to call one of your WFG Underwriters if you think you have encountered a fraudulent foreclosure.

NOTE: The information contained in this Bulletin is intended solely for the use of employees of WFG National Title Insurance Company, its title insurance agents and approved attorneys. Disclosure to any other person is expressly prohibited unless approved in writing by the WFG National Title Insurance Company’s Underwriting Department.

The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.