

WFG Underwriting Bulletin



To: All Texas Policy Issuing Agents of WFG National Title Insurance Company

From: WFG Underwriting Department

Date: February 14, 2023

Bulletin No.: TX 2023-07

Subject: Underwriting Requirements for Residential Wrap Mortgages

As mortgage interest rates continue to rise, we are seeing more requests to insure purchase money “wrap” or “wraparound” or “all inclusive” mortgages or deeds of trust on residential properties. These types of transactions are inherently risky for buyers and title insurers, as explained below. Recent revisions to the Texas Finance Code created new and stringent requirements for residential purchase money wrap mortgages, further increasing the risk to wrap lenders and title insurers. This Bulletin sets forth WFG’s underwriting requirements for insuring residential purchase money wrap transactions. Please note that this Bulletin only applies wrap mortgages of residential property, including land improved or intended to be improved with a one to four family housing unit or an individual condominium unit. Additionally, THIS BULLETIN DOES NOT CONSTITUTE LEGAL ADVICE, AND ALL PARTIES ARE STRONGLY ADVISED TO CONSULT WITH THEIR ATTORNEYS.

Definition of a Wrap Mortgage

In a wrap mortgage, the buyer (1) takes title subject to (but does not assume) an existing deed of trust and (2) grants to the seller a new deed of trust that “wraps around” the existing deed of trust. Stated another way, the wrap deed of trust secures a loan payable to the seller in an amount that is large enough to include what the seller owes on its existing loan. The buyer makes payments to the seller on the wrap deed of trust, and the seller uses those payments to continue making its payments on the existing or “wrapped” loan (while oftentimes making a profit on the difference between what the buyer pays and the seller owes). The wrapped loan will not be paid off at closing and the existing deed of trust will not be released.

Risks of the Wrap Mortgage

A wrap loan can provide purchase money funds to a buyer who is unable to qualify for or unwilling to obtain a conventional (read: high interest) mortgage. However, there are inherent risks in the structure of a wrap mortgage. Among those risks are that a wrap lender may fail to pay the wrapped mortgage, despite the wrap buyer’s full payment on the wrap loan, resulting in a foreclosure of the existing deed of trust that extinguishes the buyer’s interest in the property. Additionally, nearly all residential loans funded by institutional lenders contain a “due-on-sale” or similar clause, which enables the lender to accelerate the loan and foreclose if the owner sells the property without the lender’s consent or full payment of the loan. Residential wrap lenders and borrowers rarely, if ever, obtain the existing lender’s

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.

consent to the sale. Thus, there is a continuing risk that the existing lender may learn of the sale and call the loan due.

SB 43 and the Texas Finance Code Chapter 159

In 2021, the Texas Legislature passed Senate Bill 43 in order to combat what it saw as a “spike in the prevalence of a particularly insidious category of mortgage fraud involving wrap financing” SB 43 contains the most restrictive residential wrap regulations to date, and became effective on January 1, 2022. Those regulations are primarily found in Chapter 159 of the Texas Finance Code, entitled “Wrap Mortgage Loan Financing.” In particular, Chapter 159 provides that:

- Any person originating or making a residential wrap purchase money loan must be licensed or registered to make or originate such loans under the Texas Finance Code or qualify for an exemption to registration (Texas Finance Code § 159.051);
- A wrap lender must provide Statutory disclosures to a wrap borrower on or before the seventh day before the borrower enters into the wrap agreement (Texas Finance Code § 159.101(a));
- A wrap borrower may rescind the wrap loan and any related purchase agreement within seven days after receipt of the Statutory disclosures (Texas Finance Code § 159.101(d));
- The deed of trust lien securing the wrap loan is **VOID** if not closed by an attorney or title company (Texas Finance Code § 159.105);
- The wrap lender owes the wrap borrower a fiduciary duty to use the borrower’s payments to satisfy the prior lien, and the wrap lender holds the borrower’s payments in trust for the benefit of the borrower (Texas Finance Code § 159.151-52).

Underwriting Requirements

1. At least 7 calendar days before closing, the wrap lender must provide the disclosures required by Texas Finance Code Chapter 159 (“Statutory Disclosures”) to the buyer. A copy of the Statutory Disclosures form is available [here](#).
2. Upon receipt, the buyer must sign and date the Statutory Disclosures and return a signed copy to you. The Statutory Disclosures must be signed and dated at least 7 calendar days before closing.
 - a. It is our preference, but not a requirement, that the Statutory Disclosures be signed in your office. However, if they are not executed in your office, you must verify their execution with the buyer via phone.
 - b. If the negotiations between the wrap lender and buyer are conducted primarily in a language other than English, the Statutory Disclosures must be in that language. A Spanish language version is available [here](#).
 - c. If the Statutory Disclosures are not signed at least 7 days before closing, the closing must be rescheduled so that occurs at least 7 days after the Statutory Disclosures are signed and dated by the buyer.

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.

3. The wrap mortgage should close in your office.
 - a. It is our preference that all parties should sign in your office. However, if one or both of the parties are not able to attend the closing, you may use one of your company's vetted mobile notaries.
 - b. If the buyer does not wish to purchase an owner's title policy, the buyer must sign the T-56 Owner's Policy Rejection Form, and you must keep the signed T-56 in your permanent file.
4. Both the wrap lender and buyer must sign the Wrap Mortgage Acknowledgment and Release ("Acknowledgment") available [here](#). The Acknowledgment must be signed at or before closing, and it must be kept in your permanent file.
5. You must take exception in the commitment and all policies to the existing deed of trust as follows:

[Mortgage/Deed of Trust] given by _____ to _____, recorded in Book _____, Page _____, and/or Instrument No. _____, [and where applicable], as assigned to _____, assignee, by assignment recorded _____, in Book _____, Page _____, and/or Instrument No. _____.

6. In the loan policy insuring the wrap deed of trust, you must also include the following paragraph with the above exception to the existing deed of trust:

The indebtedness(es) secured by the lien(s) described above is(are) included in the indebtedness secured by the Insured Mortgage, and the liability of the Company hereunder is limited to the amount secured by the Insured Mortgage less the amount(s) due and owing on the indebtedness(es) secured by the lien(s) described above.

7. If the seller has not obtained the wrapped lender's consent to the sale, you must take exception in the commitment and all policies to the due on sale or any similar clause in the existing deed of trust as follows:

Any consequence, loss or damage arising from the Failure to obtain consent to the sale of the property and the [Mortgage/Deed of Trust] described in exception ____ from the holder of [Mortgage/Deed of Trust] recorded on _____, in Book _____ Page _____ and/or Instrument No. _____, including without limitation the exercise of any "due on sale" clause or prohibition on transfer, assumption, or subordinate financing.

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.

8. If the wrap lender is not licensed to make purchase money residential wrap mortgages under the Texas Finance Code, you must take exception in the commitment and all policies as follows:

For the Commitment:

"Any consequence, loss or damage arising from the failure of the proposed lender to be licensed or registered to originate or make residential mortgage loans under Texas Finance Code Chapters 156, 157, 159 or 342."

For the Owner's Policy:

"Any consequence, loss or damage arising from the failure of the beneficiary of the Deed of Trust [insert recording information] to be licensed or registered to originate or make residential mortgage loans under Texas Finance Code Chapters 156, 157, 159 or 342."

For the Loan Policy:

"Any consequence, loss or damage arising from the failure of the Insured to be licensed or registered to originate or make residential mortgage loans under Texas Finance Code Chapters 156, 157, 159 or 342."

WFG will **NOT** insure a purchase money residential wrap deed of trust under any of the following circumstances:

- The existing deed of trust secures an FHA or VA loan;
- The existing deed of trust is in default;
- The existing lender or its servicer has initiated foreclosure proceedings, including a judicial or expedited foreclosure lawsuit or notices of default or trustee's sale;
- The wrap deed of trust matures after the existing deed of trust; and/or
- The amount of the loan secured by the wrap deed of trust exceeds the property's purchase price.

A Note on Commercial Wrap Mortgages

SB 43 does not apply to non-residential property. Therefore, there is no Statutory Disclosure or seven-day notice period required in a commercial wrap mortgage transaction. However, Requirements 4 – 7, above, are still mandatory. Additionally, not all commercial wrap mortgages will contain a due on sale or similar clause, and those that do may be drafted as negative borrower covenants, such as "no subordinate mortgages" or "no further encumbrances" clauses, violation of which constitutes an event of default enabling the lender to accelerate and foreclose. A commercial borrower may also use a wrap mortgage from a third party lender to refinance an existing loan.

Questions? Contact Underwriting Counsel

If you have any questions on these requirements or how to handle a particular wrap mortgage, please contact Texas Underwriting Counsel at SWLegal@wfgtitle.com.

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.