

# WFG Underwriting Bulletin



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

From: WFG Underwriting Department

Date: August 30, 2023

Bulletin No.: TX 2023-30

Subject: 2023 Legislation Effective Immediately

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The 88th Session of the Texas Legislature passed multiple laws which affect real estate and the title insurance industry. This Bulletin provides a synopsis of those new laws that impact our business which became effective immediately upon signing by Governor Abbott. Additional Bulletins will discuss new legislation effective September 1, 2023 and later.

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## **A. SB 785 – Geothermal Energy Ownership and Title Policy Exceptions**

Revises Texas Insurance Code § 2703.056 to allow a general exception in title commitments and policies to “geothermal energy and associated resources below the surface of the land” and special exceptions to an instrument that purports to reserve or transfer all or part of “the geothermal energy and associated resources below the surface of the land.” The bill also adds § 141.004 to the Texas Natural Resources Code, which provides that the geothermal energy and associated resources below the surface are owned by: (a) the landowner, if the mineral estate has not been severed from the surface estate; and (b) the surface estate owner, if the mineral estate has been severed. These rules apply unless expressly provided otherwise by a conveyance, contract, deed, reservation, exception, limitation, lease, or other binding obligation.

Effective Date: June 18, 2023.

Underwriting Requirements: Unless underwriter approval is obtained, the following exception must be added to Schedule B of all commitments, binders, and title insurance policies:

"All leases, grants, exceptions or reservations of the geothermal energy and associated resources below the surface of the land, together with all rights, privileges, and immunities relating thereto, appearing in the Public Records whether listed in Schedule B or not. There may be leases, grants, exceptions or reservations of the geothermal energy and associated resources below the surface of the land that are not listed."

**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.**

**B. HB 2815 and HB 2816 – Revisions to MUD and Water District Notices**

Revise Texas Water Code § 49.452 and related statutes and add § 49.4521 to change the content and substance of the Municipal Utility District (“MUD”) and water district notices that must be delivered to and executed by the purchaser prior to final execution of the contract and executed and acknowledged by the seller and purchaser at closing, and recorded. The bills also require that MUDs and water districts that are required to maintain a website must also post the district’s notice to purchasers.

Effective Date: Applies to MUD and water district notices to purchasers on or after June 18, 2023.

Underwriting Requirements: Title companies must obtain the new notices for execution by seller and purchaser at closing and recording. See [Bulletin TX 2023-29](#) for more information.

**C. HB 1195 – Photo ID May Be Required For In-Person Recording**

Amends Local Government Code § 191.010(b) to allow clerks in counties that have e-filing for real property records to require a photo ID for in-person filing. The bill also permits county clerks to retain a copy of the ID, but they may not charge a fee for that copy.

Effective Date: June 9, 2023.

Underwriting Requirements: Be aware that a photo ID may be required (and a copy of that ID retained) in order to record instruments in person in the real property records if the county allows for e-filing.

**D. HB 2196 – Requirements for Qualifying Trusts**

Amends Texas Property Code § 41.0021 to revise the requirements for a trust to be considered a “qualifying trust” which holds the settlor or beneficiary’s homestead and qualifies for homestead protection under the Texas Constitution and Property Code. In particular, the bill clarifies that a qualifying trust can still allow the settlor’s spouse (who is also a settlor) to revoke the trust; and permit the settlor or beneficiary to occupy the homestead at no cost or rent free and without charge, except for taxes.

Effective Date: June 9, 2023.

Underwriting Requirements: When dealing with homestead property held by a trust, especially in a home equity loan transaction, confirm that the trust agreement meets the requirements for a qualifying trust in Texas Property Code § 41.0021. If you cannot make that determination, please contact WFG Texas Underwriting Counsel for assistance.

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#### **E. HB 2333 – Creation of a Noncharitable Trust Without a Beneficiary**

Adds Subchapter F to the Texas Property Code (§§ 112.121 – 123) to allow a trust to be created for a noncharitable purpose (including economic or noneconomic benefits) without a definite or specific beneficiary. The new Subchapter requires the trust agreement to appoint one or more “trust enforcers” to enforce the terms and purpose of the trust. The trust enforcer is considered a fiduciary to the trust, but it is not a trustee or beneficiary of the trust. If there is more than one trust enforcer, the trust enforcers will act by majority vote. If there is an even number of trust enforcers, the decision of the trustee will control. The trust agreement may provide for the succession of a trust enforcer, and a court may appoint a new trust enforcer if none is currently serving. Property of the trust may only be used for the intended purpose of the trust, unless a court order determines otherwise.

Effective Date: Applies to trusts created on or after June 18, 2023.

Underwriting Requirements: When dealing with a noncharitable trust without a specific beneficiary that is created on or after June 18, 2023, confirm that the use of the subject property in the insured transaction (such as a sale or mortgage) conforms to the intended purpose of the trust. If you cannot make that determination, please contact WFG Texas Underwriting Counsel for assistance.

**If you have any questions regarding any of these bills, please contact Texas Underwriting Counsel at [SWLegal@wfgtitle.com](mailto:SWLegal@wfgtitle.com).**

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