

# WFG Underwriting Bulletin



To: All Texas Policy Issuing Agents of WFG National Title Insurance Company  
From: WFG Underwriting Department  
Date: July 9, 2024  
Bulletin No. TX 2024-17  
Subject: Revised Guidelines for Affidavits of Heirship

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**\*Note that this bulletin replaces WFG Underwriting Bulletin TX 2016-58.**

Texas law recognizes the use of Affidavits of Heirship (“AOH”) in real property transactions. The purpose of an AOH is to state the facts upon which a determination of heirship can be made. The AOH itself is simply a statement of facts. It does not convey property—it just identifies the people who will need to convey.

### **Waiting Period**

WFG does not have a minimum waiting period after the death of a property owner (the “Decedent”) before we will accept an AOH in lieu of formal probate. However, if the property owner died less than six months prior to closing, contact Underwriting for approval. We will likely require evidence demonstrating that all debts of the Decedent have been paid, including paid receipts or invoices showing a zero balance.

### **Use of an AOH When Property Owner Left a Will**

1. Everyone who would have taken the property under the will and all of the heirs as shown by the AOH must sign the conveyance instruments. If you are unsure who takes under the will, contact Underwriting for assistance.
2. The will must be attached to the AOH when the AOH is filed in the deed records, unless Underwriting waives this requirement.

### **Form, Execution, and Closing**

1. WFG prefers [this form](#) for affidavits of heirship relied on in our insured transactions. The [AOH Questionnaire](#) may assist the affiant in completing the AOH.
2. A separate AOH (or probate proceeding) is required for each Decedent in the chain of title, unless Underwriting waives this requirement.
3. The AOH should be executed by a member of the Decedent’s immediate family and corroborated by sworn statements from at least two disinterested persons who knew the Decedent for at least ten years.
  - a. A disinterested person is one who will not benefit financially through intestate succession and is not related to anyone in the chain of succession.
  - b. Contact Underwriting if the family is not able to locate two disinterested people.
4. The heirs are considered the property owners from the date of death of the Decedent.
  - a. All identified heirs must sign the closing documents unless they convey their interest to another party first.

**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. The spouse of each heir also must sign, unless that heir owns another property as their Texas homestead.
- 5. All AOHs prepared for your transaction must be executed in your office or notarized by a notary that has been vetted and approved by your office.
- 6. The heirs must convey by general warranty deed.

**Additional Documents and Recording**

- 1. Find additional documentation to corroborate the statements in the AOH. Do not record this information with the AOH; maintain it in your file.
  - a. Ask the Decedent’s family for the Decedent’s obituary or funeral program.
  - b. Utilize free internet resources such as [www.findagrave.com](http://www.findagrave.com) and [www.legacy.com](http://www.legacy.com).
  - c. A subscription to [www.ancestry.com](http://www.ancestry.com) or similar services can be well worth the investment.
- 2. Obtain a death certificate for the Decedent issued by the appropriate governmental agency. Do not record the death certificate; maintain it in your file.
- 3. Record the AOH and its exhibits, if any, in the county deed records.

**Debts and Claims**

- 1. You must address the possibility of creditors of the Decedent’s estate. Any such creditor might have a statutory lien that has priority over the interests of any purchaser or lender that we are insuring. WFG requires the following:
  - a. Execution of the *Affidavit/Indemnity Agreement Regarding Debts of the Estate, Estate Taxes, and MERP* ([the “Affidavit”](#)), by all intestate heirs.
    - i. Do not record this Affidavit; maintain it in your file.
    - ii. If the insured transaction exceeds \$1,000,000, contact Underwriting for additional approval.
  - b. Debts of the Estate:
    - i. All unpaid debts of the Decedent’s estate must be listed in the Affidavit.
    - ii. All debts that are not secured by the subject real property must be paid at or prior to closing.
    - iii. Contact Underwriting if the affiants are unsure of the Decedent’s debts or refuse to pay those debts.
  - c. Estate Taxes:
    - i. The size of the Decedent’s estate must be stated in the Affidavit.
    - ii. If the stated amount of the estate is less than federal exemption amount for the year of the Decedent’s death, you may proceed without regard to estate tax. See the chart for exemption amounts by year:

Year of Death	Exemption Amount
2017	\$5,490,000
2018	\$11,180,000
2019	\$11,400,000
2020	\$11,580,000
2021	\$11,700,000
2022	\$12,060,000
2023	\$12,920,000
2024	\$13,610,000

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- iii. As an alternative, we will accept a letter from an attorney for the estate's representative stating that no estate taxes are owed.
  - iv. If the stated amount of the estate exceeds the federal exemption amount, contact Underwriting for additional approval.
- d. MERP:
- i. If the property owner was 55 years of age or older at death and passed away less than four years prior to closing, the Medicaid Expense Recovery Program ("MERP") may be a concern.
  - ii. If none of the boxes in Section 3 of the Affidavit are checked, you must follow the below instructions:
    - a) Submit a request to the state for a certification that the Decedent's estate is not subject to a MERP claim;
    - b) Use the form found at <https://hhs.texas.gov/sites/default/files/documents/services/aging/txm/erpcertificationform.pdf> to make the request;
    - c) Wait to close until you have received the completed form from the State; and
    - d) If the form indicates there is a MERP claim, pay that amount at or before closing.
2. Debts of the Decedent's **HEIRS** are also an issue, regardless of how long ago the Decedent passed away. Conduct a name search on all identified heirs to identify involuntary liens that may have attached to the property when the property owner died.

#### **Legal Conclusions**

Disregard any conclusions contained in the Affidavit as to who the heirs are. For example, a statement such as "Decedent's only heir is his surviving spouse" is a conclusion of law and not a fact.

#### **Potential for Fraud**

AOHs can be vehicles for fraud. If you doubt the truthfulness or accuracy of the AOH, do not close the transaction. WFG relies on our agents, and we do not want to insure a transaction if our agent is not comfortable with it. **If you identify any red flags while working with the parties or have concerns about the information provided to you by the Decedent's family, contact Underwriting or speak to your management.**

If you have any other questions relating to an AOH or how to interpret its facts, contact your SW Legal Underwriting team at [swlegal@wfgtitle.com](mailto:swlegal@wfgtitle.com).

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