

WFG Underwriting Bulletin



To: All Texas Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: March 4, 2025
Bulletin No.: TX 2025-13
Subject: Nonjudicial Foreclosures Do Not Extinguish Junior Federal Lien

In *Show Me State Premium Homes, LLC v. McDonnell*, 74 F.4th 911(8th Cir. 2023), the federal Eighth Circuit Court of Appeals reinforced existing law that reminds title companies that junior federal liens are not extinguished by non-judicial foreclosures of prior liens.

WFG issued its national bulletin on the effect of *Show Me State* on September 8, 2023, available here: [NB 2023-08](#) This bulletin is intended to clarify WFG's position for agents in Texas, where the vast majority of foreclosures are conducted non-judicially.

The Relevant Law:

- For purposes of this bulletin, a “Junior Federal Lien” is any type of federal lien (other than a federal tax lien) that is subordinate to the senior lien that is foreclosed and includes:
 - Partial Claims Deeds of Trust in favor of the Department of Housing and Urban Development (“HUD”);
 - Subordinate reverse mortgage deeds of trust in favor of HUD;
 - Judgment liens in favor of the federal government or a federal agency; and
 - Criminal judgment lien/anti-terrorism liens.
- A non-judicial or Texas Rule of Civil Procedure 736 quasi-judicial foreclosure will **not** extinguish a Junior Federal Lien on the same property.
- Only a lawsuit ordering foreclosure of the senior lien (in which the federal lienholder was served with process) will extinguish a Junior Federal Lien.
- After the judicial foreclosure, the government will have one year from the date of sale to redeem the property.

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

Underwriting Requirements:

1. To remove a Junior Federal Lien, WFG requires:
 - a. A release of the Junior Federal Lien, or
 - b. Judicial foreclosure of a senior lien.
2. The judicial foreclosure of the senior lien must include:
 - a. A court order for foreclosure;
 - b. Evidence in the foreclosure lawsuit or a statement in the order for foreclosure that the federal government was properly served and noticed; and
 - c. A deed to the foreclosure purchaser signed by a sheriff, constable, or substitute trustee.
 - i. Note that some judicial foreclosure orders will allow the foreclosing lender to conduct the sale as a non-judicial foreclosure pursuant to Texas Property Code § 51.002 *et seq.* So long as the prior requirements of the judicial foreclosure lawsuit are met, this is still a valid judicial foreclosure.
3. If closing takes place less than one year from the date of the foreclosure sale, you must either:
 - a. Obtain a written waiver of the right of redemption from the appropriate authority (*e.g.*, the U.S. Attorney for the district where the property is located or the federal officer in charge of administering the Junior Federal Lien); or
 - b. Take exception to the right of redemption as follows:

Any right, or claim of right of the United States under 28 U.S.C. § 2410(c) to redeem the subject property within one year from the date of foreclosure sale set forth in [foreclosure deed] dated ___ recorded in/under ___ of the Real Property Records of ___ County, Texas.
4. WFG can consider removing a Junior Federal Lien after a non-judicial foreclosure of a senior lien if the non-judicial foreclosure occurred sufficiently far back in the chain of title. Approval will not be routinely given, so please contact WFG Underwriting Counsel with any questions at SWLegal@wfgtitle.com.

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Case Background

The Department of Housing and Urban Development (“HUD”) held two home equity loan deeds of trust on a home. When the borrowers fell behind on their property taxes, the county tax collector conducted a nonjudicial foreclosure and sold the property at auction. A bond company bought it, received a deed, and then sold it to Show Me Premium Homes, LLC (“Show Me”).

Worried about the marketability of its title, Show Me filed a suit to quiet title. The company requested an order declaring that the tax foreclosure extinguished all other interests in the home, including those belonging to the United States. However, the court granted the USA’s motion to dismiss on the basis that, in accordance with federal statutory law, **a non-judicial foreclosure did not extinguish the HUD liens.** Show Me then appealed to the 8th Circuit Court of Appeals which, for our purposes, affirmed the District Court's decision.

The Governing Law is Not New: 28 U.S.C. § 2410(c)

The federal law in question essentially states the following:

- If the federal lien or mortgage of the USA is senior to the lien being foreclosed on, the lien of the USA survives.
- If the federal lien (other than a federal tax lien) or mortgage of the USA is junior to the lien being foreclosed on in a non-judicial proceeding (or in Texas, a quasi-foreclosure proceeding under Texas Rule of Civil Procedure 735 *et seq* as well), the lien of the USA survives.
- If the lien that is senior to the federal lien (other than a federal tax lien) or mortgage of the USA is judicially foreclosed and the USA is named as a party in that foreclosure lawsuit, the federal lien or mortgage of the USA will be extinguished; however, the USA will have one year from the date of sale to redeem.

Both the District Court and the Court of Appeals concluded that the non-judicial tax foreclosure proceeding in Missouri was not considered a judicial sale; therefore, as required under 28 USC 2410(c), the HUD mortgages survived and remained liens on title. The courts further found that the quiet title action would not extinguish the federal liens, because there was still no judicial sale.

If you have any questions, please contact Southwest Underwriting Counsel at SWLegal@wfgtitle.com.

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