

## WFG Underwriting Bulletin



To: All Texas Policy Issuing Agents of WFG National Title Insurance Company  
From: WFG Underwriting Department  
Date: September 30, 2025  
Bulletin No.: TX 2025-37  
Subject: Insuring After a Non-Judicial Foreclosure

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**\*This bulletin replaces [WFG Underwriting Bulletin-Texas No. 04](#).\***

Non-Judicial Foreclosure allows a lienholder to sell the property without having to file a civil suit against the borrower (judicial foreclosure). To non-judicially foreclose, the lienholder must have a deed of trust with a power of sale clause giving it the authority to sell the property.

The foreclosure statutes set forth in Texas Property Code Section 51.002 supplement the terms of the deed of trust. Therefore, you must review the terms and conditions set forth in the deed of trust to ensure the foreclosure strictly complied with those terms, as well as the requirements under Section 51.002.

Statements in a trustee's or substitute trustee's affidavit may be relied upon to show compliance with Section 51.002 and the terms of the deed of trust (absent knowledge to the contrary). The affidavit should specifically state that those requirements have been met.

WFG may insure the sale subsequent to the foreclosure (a policy may not be issued to the purchaser at the foreclosure sale).

### **Effect of Foreclosure on Other Liens**

As a reminder, foreclosure of a superior lien generally extinguishes the right of an inferior lienholder. However, see [Bulletin TX 2025-13 Non-judicial Foreclosures Do Not Extinguish Junior Federal Lien](#), as well as our Texas Real Property Lien Duration and Priority chart.

**Remember:** IRS liens are not automatically extinguished by foreclosure. The IRS must be given notice of the foreclosure in compliance with statutory provisions of Title 26 U.S.C.A., Section 7425, or the lien will not be extinguished by the sale. If this notice is given, the IRS still has 120 days following the sale to redeem the property.

### **Rescission of Foreclosure**

Texas Property Code Section 51.016 permits a non-judicial foreclosure to be rescinded within 15 days by a mortgagee, trustee or substitute trustee under certain circumstances. Written notice of the rescission must be given to the purchaser, debtor, and be filed of record in the real property records. The title plant must be certified 30 days from the date of the foreclosure sale to confirm there has been no rescission of the non-judicial 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.**

**The following Schedule C Requirement should be utilized when your vesting deed is a Trustee's or Substitute Trustee's Deed from a Non-Judicial Foreclosure, or where title has not been insured since the Non-Judicial Foreclosure Sale:**

1. Title to subject property is based upon a Trustee's or Substitute Trustee's Deed dated \_\_\_\_\_, recorded under \_\_\_\_\_ County Clerk's File No. \_\_\_\_\_, evidencing a foreclosure of a Deed of Trust dated \_\_\_\_\_, recorded on \_\_\_\_\_, under \_\_\_\_\_ County Clerk's File No. \_\_\_\_\_. In connection with the non-judicial foreclosure by which \_\_\_\_\_ acquired title, the Company must be provided with satisfactory evidence of the following:
  - a. If a Substitute Trustee foreclosed, recordation of appointment of the substitute trustee (or inclusion of the appointment of the substitute trustee in the notice of foreclosure sale).
  - b. Recordation of a Trustee's/Substitute Trustee's Affidavit verifying that:
    - i. The debtors were not in bankruptcy and were alive at the time of foreclosure;
    - ii. At the time of foreclosure and one year prior thereto, the debtors were not in active military duty as members of the armed services of the United States or the State of Texas;
    - iii. If the property was used as the debtors' residence, the holder of the debt gave written notice to each debtor by certified mail stating that the debt was in default and giving at least 20 days (or longer if required by the deed of trust) to cure the default before the debt was accelerated and notice of foreclosure was given;
    - iv. The holder of the debt served written notice of acceleration and the foreclosure sale by certified mail on each debtor who was obligated to pay the debt, at least 21 days (or longer if required by the deed of trust) before the date of the sale;
    - v. Notice of the foreclosure sale, including a statement of the earliest time at which the sale would begin, was posted at the courthouse door and filed with the county clerk at least 21 days before the date of the sale; and
    - vi. The sale was conducted in the designated area of the courthouse or other location designated by the county commissioners and occurred at the time set out in the notice of foreclosure sale or within three hours thereafter.
  - c. The sale was conducted on the first Tuesday of the month, unless the first Tuesday fell on January 1 or July 4, in which case the sale was held on the first Wednesday of that month.
  - d. The foreclosure strictly complied with the terms in the deed of trust.
  - e. If there was an Internal Revenue Service lien of record, the IRS was given notice of the foreclosure in compliance with statutory provisions of Title 26 U.S.C.A., Section 7425, with regard to any Federal Tax Lien filed against an individual who held an interest in subject property. Any policy issued within 120 days of the date of sale must contain the following exception:

*Subject to the right of the United States to redeem the subject property within 120 days from the date of foreclosure as set forth in trustee's/substitute trustee's deed*

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*dated \_\_\_\_, recorded in/under \_\_\_\_ of the Real Property Records of \_\_\_\_ County, Texas.*

- f. The property is currently vacant.
- g. There is no pending lawsuit or other challenge to overturn or invalidate the foreclosure.
- h. The title plant is certified 30 days from the date of the foreclosure sale to confirm there has been no rescission of the non-judicial foreclosure.
- i. If closing occurs less than 90 days from the date the foreclosure deed was recorded, the following exception must be included on Schedule B, unless waived by Underwriting Counsel:

*Any right, asserted right, or challenge, made by any party, including, but not limited to, a creditor, trustee, or debtor in possession in bankruptcy to avoid or invalidate that certain trustee's/substitute trustee's deed dated \_\_\_\_, recorded in/under \_\_\_\_ of the Real Property Records of \_\_\_\_ County, Texas.*

If you have any other questions relating to contents of this bulletin, please contact your SW Legal Underwriting team at [swlegal@wfgtitle.com](mailto:swlegal@wfgtitle.com).

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