



# HE<sup>2</sup>

## Home Equity 2<sup>nd</sup> Generation Title Insurance Policy

Issued By  
**WFG NATIONAL TITLE INSURANCE COMPANY**

**POLICY NUMBER:**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE AND THE CONDITIONS AND STIPULATIONS HEREOF, WFG NATIONAL TITLE INSURANCE COMPANY, a South Carolina Corporation, herein called the Company, insures, as of Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of the matters set forth in the Covered Risks stated herein.

This Policy shall not be valid or binding until countersigned by either a duly authorized agent or representative of the Company and a Certificate has been issued identifying the Insured Mortgage.

### NOTICE

This is not a standard ALTA Loan Policy. This is a special Policy designed specifically for junior priority loans secured by a one-to-four family residential structure or, if stated in the description of the Land, a residential condominium unit providing limited protections concerning only those matters specifically defined in the Insuring Provisions set forth herein. Consult with your attorney about the meaning, coverage, exclusions and exceptions of this Policy.

**In Witness Whereof**, WFG NATIONAL TITLE INSURANCE COMPANY has caused this policy to be signed and sealed by its duly authorized officers.

Issued By:

**WFG NATIONAL TITLE INSURANCE COMPANY**

\_\_\_\_\_  
Agent

By: \_\_\_\_\_  
President

\_\_\_\_\_  
Authorized Signatory

ATTEST: \_\_\_\_\_  
Secretary



## COVERED RISKS

1. At Date of Policy the person(s) identified in the vesting section of the Property Report not being the named grantee(s) on the last document recorded in the Public Records purporting to vest the mortgagor's estate or interest in title to the Land.
2. The description of the Land set forth in the Property Report not being sufficient to impart constructive notice to purchasers and encumbrancers for value and without Knowledge.
3. Any Monetary Lien affecting title to the Land recorded in the Public Records at Date of Policy and not set forth in the Property Report or Borrower's Credit Report
4. Any Monetary Lien set forth in the Property Report or Borrower's Credit Report where (a) the insured obtained a Judgment Affidavit executed by the borrower; and (b) there was no indication of that Monetary Lien in any Mortgagor's Application or credit information obtained by the Insured.
5. Any *Lis Pendens* or Notice of Suit, and the results of the lawsuit referenced therein, affecting the Land filed in the Public Records at Date of Policy and not set forth in the Property Report or Borrower's Credit Report
6. Any ad valorem taxes or assessments of any governmental taxing authority, including Property Assessed Clean Energy (PACE), Energy Loan Tax Assessment Program (ELTAP), or Voluntary Environmental Improvement Bonds (VEIBS), which constitute a lien on the title and which appear as due and payable at Date of Policy in the official ad valorem tax records where the Land is located and not shown in the Property Report or Borrower's Credit Report.
7. The invalidity or unenforceability of the lien of the Insured Mortgage upon the title to the Land resulting from:
  - (a) forgery, fraud, undue influence, duress, incompetency, incapacity or impersonation.
  - (b) unauthorized execution of the Insured Mortgage (i) under a falsified, expired or otherwise invalid power of attorney; or (ii) by a trustee of a trust established for estate planning purposes.
  - (c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
  - (d) failure to perform those acts necessary to create a document by electronic means authorized by law;
  - (e) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law;
  - (f) the failure of the Insured Mortgage to include the valid signature of a spouse where such spouse's signature is required to transfer an inchoate or other legal right or interest in the real property under state law, including, without limitation, a dower, curtesy, homestead, or community property interest, and the spouse was not known to Insured when it closed the Mortgage.
8. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the title to the Land because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
  - (a) to be timely, or
  - (b) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
9. The failure of the lien for future advances secured by the Insured Mortgage to have the same priority over Monetary Liens disclosed by the Public Records as advances secured by the Insured Mortgage at Date of Policy.
10. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from the provisions of the Insured Mortgage which provide for changes in the rate of interest.
11. Loss of priority of the lien of the Insured Mortgage resulting from changes in the rate of interest calculated in accordance with the formula provided in the Insured Mortgage at Date of Policy.
12. Any incomplete, incorrect, or inaccurate information contained in the Property Report.
13. Any defect in or lien or encumbrance on the title to the Land or other matter included in Covered Risks 1 through 12 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

The Company will also pay costs, attorneys' fees and expenses incurred in the defense of the Insured to the extent provided in the Conditions and Stipulations.

## EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this Policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. Any defect in the title, lien (other than a Monetary Lien) or other encumbrance existing or arising prior to the dated date of the Insured Mortgage including forgery, fraud, undue influence, duress, incompetency, incapacity or impersonation.
2. Except when the Company or its authorized agent is responsible for recording, the failure of the Insured to present the Insured Mortgage for Recording within 30 calendar days of the Funding Date to the appropriate governmental agency responsible for maintaining the Public Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property purchasers for value and without Knowledge.
3. The existence of any Monetary Lien securing a loan, the proceeds of which were used in whole or in part to acquire the Land.
4. With respect to paragraphs 7 and 8(a) of the Insuring Provisions, Company shall have no liability if the Company or Company's agent does not conduct the closing of the Insured Mortgage.
5. With respect to paragraph 9 of the Insuring Provisions:
  - (a) ad valorem taxes or assessments;
  - (b) any advance under the terms of the Insured mortgage or its related documents which is made after receipt by the insured of notice from the Mortgagor of the Insured Mortgage directing the termination of advance;
  - (c) the failure of the Insured Mortgage to state that it secures repayment of future advances.
6. With respect to paragraphs 9,10, and 11 of the Insuring Provisions:
  - (a) to the extent the Insured has Knowledge of such failure, the failure of the Insured Mortgage to create a lien on the Land; and
  - (b) an advance made subsequent to Knowledge of the Insured that the mortgagor shown on the Insured Mortgage is not the owner of the land at the date of such advance.
7. Defects, liens, encumbrances, adverse claims or other matters;
  - (a) created, suffered, assumed or agreed to by the Insured Claimant;
  - (b) known to the Insured Claimant, whether or not disclosed in the Public Records;
  - (c) resulting in no loss or damage to the Insured Claimant; or
  - (d) recorded in the Public Records subsequent to Date of Policy.
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
8. Any Monetary Lien securing an obligation disclosed by the Property Report, the Mortgagor's Application, or any credit information obtained by the Insured.
9. Any ownership interest adverse to the mortgagor in the Land disclosed to the Insured by the Mortgagor's Application, or any other document.
10. Any loss resulting from a loan which, at the time of making by the Insured or the Insured's Agent, had a principal amount of more than the Amount of Insurance stated on the Certificate.
11. Any loss regarding a loan for which the Insured or the Insured's agent did not comply with all procedures required by the Insured or applicable law, statute or regulation for the underwriting of such loan, including but not limited to complying with loan-to-value ratio guidelines, if such noncompliance was a material reason for the loss.
12. Any change or modification of the Insured Mortgage or its related documents other than that described in paragraphs 10 and 11 of the Insuring Provisions that are deemed a novation of the Insured Mortgage.
13. Notwithstanding any description of the Land in a Certificate, no coverage is provided under this policy for Land (a) not improved with a one-to four family residential structure; (b) not improved with a residential condominium unit; or (c) which is vacant and zoned for one-to-four family residential use.

## CONDITIONS

### 1. DEFINITION OF TERMS.

The following terms when used in this Policy mean:

- (a) "Amount of Insurance" with regard to each Insured Mortgage shall be the initial principal amount of each Insured Mortgage as set forth on the corresponding Certificate.
- (b) "Certificate": A certificate to be attached to this Policy or an electronic listing issued by the Company which identifies the policy number, name of insured, Date of Policy, and describes the Land and the Insured Mortgage. Each Certificate attached to this Policy is deemed to be incorporated into and constitute a part of the Policy and the Certificate together with the Policy to which it is attached shall constitute the entire contract between the Insured and the Company.
- (c) "Commercially Uneconomical" with respect to any Insured Mortgage, a good faith determination by the Insured that pursuing foreclosure is deemed infeasible and/or uneconomical. A Commercially Uneconomical determination may or may not be evidenced by the Insured "charging off" the full amount of the loan.
- (d) "Date of Policy" means the date shown on the Certificate.
- (e) "Funding Date": the date on which the proceeds of the loan secured by the Insured Mortgage, or any portion thereof, first become available as a matter of right to or for the benefit of the mortgagor named in the Insured Mortgage.
- (f) "Insured": the Named Insured and the owner of the indebtedness secured by the Insured Mortgage, except an owner who is an obligor under the provisions of Section 12 of these Conditions and Stipulations. The Company reserves all rights and defenses against any Insured acquiring an interest in the Insured Mortgage subsequent to Date of Policy which the Company would have had against the Named Insured or any subsequent Insured.
- (g) "Insured Claimant": an Insured claiming loss or damage hereunder.
- (h) "Insured Mortgage": all or any of the mortgages, deeds of trust, deeds to secure debt, or other security instruments, documented by the Named Insured and identified in and evidenced by a Certificate.
- (i) "Knowledge" or "Known": means actual knowledge, not constructive knowledge or notice which may be imputed to an Insured by reason of the Public Records.
- (j) "Judgment Affidavit" means an affidavit executed by the borrower or prior owner subject to a Monetary Lien, in form approved by the Company, swearing or affirming that the particular Monetary Lien was against a person other than the borrower or prior owner.
- (k) "Land": the land described in the Insured Mortgage and improvements affixed thereto which by law constitute real property. The term "Land" does not include any property beyond the lines of the area described or referred to in the Property Report, nor any right, title, interest, estate or easement in abutting streets, roads, alleys, avenues, lanes, ways or waterways.
- (l) "Monetary Lien": any mortgage, deed of trust, deed to secure debt, judgment lien or other lien affecting the title securing an obligation to pay money, but not including any lien created in any easement, covenant, condition, restriction, or declaration of condominium, homeowners' association, common interest community, or planned unit development.
- (m) "Mortgagor's Application": any affidavit, loan application, credit report, supporting documentation or other document provided to the Named Insured by the mortgagor named in the Insured Mortgage or any other borrower which provides information relevant to the loan approval process including information concerning title to the Land or any Monetary Lien.
- (n) "Named Insured": the party named in Certificate, item 1.
- (o) "Policy": this Home Equity 2<sup>nd</sup> Generation Title Insurance Policy and the Certificate as relates to a specific Insured Mortgage.
- (p) "Property Report" means the legal and vesting report, or property report prepared by the Company, attorney opinion, or its authorized agent and identified in the Certificate.
- (q) "Public Records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
- (r) "Record", "Recorded", or "Recording": record and/or file in the Public Records.

### 2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Land by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Land. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

### 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, or (ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the title to the Land or the lien of the Insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

Institution of foreclosure proceedings shall not be a condition precedent to filing a claim or the existence of a covered loss, where the Insured has determined such actions to be Commercially Uneconomical.

#### **4. PROOF OF LOSS**

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

#### **5. DEFENSE AND PROSECUTION OF ACTIONS**

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the title to the Land or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

#### **6. DUTY OF INSURED CLAIMANT TO COOPERATE**

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose.

Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the title to the Land, the lien of the Insured Mortgage, or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

#### **7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY**

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

(ii) To purchase the indebtedness for the amount of the indebtedness on the date of purchase, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.

When the Company purchases the indebtedness, the Insured shall transfer, assign, and convey to the Company the indebtedness and the Insured Mortgage, together with any collateral security.

Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

## 8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of

(i) the Amount of Insurance,

(ii) the indebtedness, or

(iii) the difference between the value of the title to the Land as insured and the value of the title to the Land subject to the risk insured against by this policy

(b) In addition to the extent of liability under (a), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

## 9. LIMITATION OF LIABILITY

(a) If the Company establishes the title to the Land, or removes the alleged defect, lien, or encumbrance, or establishes the lien of the Insured Mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the title to the Land or to the lien of the Insured Mortgage, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

## 10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

(a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment. However, any payments made prior to the acquisition of title to the Land as provided in Section 2 of these Conditions shall not reduce the Amount of Insurance afforded under this policy except to the extent that the payments reduce the indebtedness.

(b) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company

## 11. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

## **12. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT**

### **(a) The Company's Right to Recover**

Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Land or Insured Mortgage and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

### **(b) The Company's Rights Against Noninsured Obligors**

The Company's right of subrogation includes the Insured's rights against non-insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

## **13. ARBITRATION - INTENTIONALLY DELETED**

## **14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT**

(a) This Policy together with all Certificates, if any, attached to it by the Company is the entire policy and

contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the title to the Land or lien of the Insured Mortgage or by any action asserting such claim shall be restricted to this policy.

## **15. SEVERABILITY**

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

## **16. CHOICE OF LAW; FORUM**

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the title to the Land or the lien of the Insured Mortgage that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

## **17. NOTICES, WHERE SENT**

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at 12909 SW 68th Pkwy., Suite 350, Portland, OR 97223. Attention: Claims Department. WFG National Title Insurance Company's telephone number is (800) 334-8885. Email address: [claims@wfgnationaltitle.com](mailto:claims@wfgnationaltitle.com).