



To: All Washington Policy Issuing Agents and Direct Operations of WFG National Title Insurance Co.
From: WFG Underwriting Department
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Subject: Bankruptcy and Statute of Limitation

Recently, the Washington Supreme Court settled a question of law regarding the impact of a debtor's discharge in bankruptcy on when the statute of limitations to foreclose is triggered. The Court settled this question in publishing two cases addressing statute of limitations and foreclosure (click on each to view):

[Merritt v USAA Federal Savings Bank](#)

[Copper Creek \(Marysville\) Homeowners Assn v Kurtz.](#)

The question was what was the impact of a bankruptcy discharge on the remaining payments on an installment note and deed of trust. The appellate divisions had split, with one side holding the discharge started the 6-year statute of limitations to foreclose and another stating that the discharge only addressed the payments missed prior to the discharge, meaning that every missed installment after discharge started its own 6-year statute of limitations.

With *Merritt* and *Copper*, the court settled the issue. While the BK does discharge the obligation to pay those installments due under the note up to the date of the discharge, any missed installment payments due after the discharge, each missed payment has its own 6-year time period to foreclose the lien. Remember, a discharge does not by itself remove the lien, only the personal obligation to pay the discharged debts.

For the title industry, it means we cannot omit an existing DT, even if scheduled in the BK, unless every payment due was due more than 6 years prior. As with all law, there can be exceptions, such as a clear express acceleration of all payments to change the statute of limitations commencement. Consult with state underwriting when a client, their counsel or their agent argues a debt is out by time.

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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.