

## WFG Underwriting Bulletin



To: All Texas Policy Issuing Agents of WFG National Title Insurance Company

From: WFG Underwriting Department

Date: September 8, 2023

Bulletin No.: TX 2023-31

Subject: 2023 Legislation Effective September 1, 2023

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The bills discussed below were signed into law in the 88th Session of the Texas Legislature and went into effect on September 1, 2023. You should be aware of these bills, which have the potential to affect real estate and the title insurance industry. If you have any questions, please contact WFG Texas Underwriting Counsel at [SWLegal@wfgtitle.com](mailto:SWLegal@wfgtitle.com).

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### A. SB 801 – Trustee as Grantee Clarification

Adds Texas Property Code § 114.087 and amends § 5.028(a)(2) to provide that the trustee of a trust is considered for all purposes to be the named grantee in a deed that names only the trust as the grantee (unless the trust is a legal entity under another Texas or another state’s law). The bill also explicitly enables a deed that names only the trust as grantee to be corrected with a non-material correction affidavit under Texas Property Code § 5.028. Further, the bill provides that a recorded trust certification in compliance with Texas Property Code § 114.086 is presumed to correctly identify the trust and trustee and may be relied upon by a good faith purchaser or lender for value.

Effective Date: September 1, 2023.

Underwriting Requirements: For future conveyances to a trust, all deeds must identify the grantee as the trustee of the trust, unless the trust is a legal entity under Texas or another state’s law. For current and prior deeds naming only the trust (and not the trustee) as the grantee, you must obtain and record either a non-material correction affidavit or a trust certification that complies with Texas Property Code § 114.086 to identify the trustee. If you cannot obtain either, please contact WFG Texas Underwriting Counsel for assistance or approval to proceed.

### B. HB 219 – Release of Lien Requirement for Home Loans

Adds Texas Finance Code § 343.108, which requires a mortgage servicer or lender to deliver a release of lien to the borrower or record the release within 60 days after it receives the correct payoff amount for a home loan. If the borrower sends a written request to the servicer or lender for a release within

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20 days after the payoff, the servicer or lender must deliver or record the release no later than 30 days after the date of its receipt of the borrower's written request.

Effective Date: September 1, 2023.

Underwriting Requirements: Be aware of this statutory tool, but it does not affect how you pay off prior liens and request releases. Notably, there is no enforcement mechanism in the bill if a lender or servicer fails to comply with the stated deadlines. Therefore, you should continue to collect for, pay off, and request releases for all existing deeds of trust and other mortgage liens as you have been doing.

#### **C. HB 1040 – Expanded Ability of Entities Regulated by TDI to Conduct Business Electronically**

Amends Texas Insurance Code §§ 35.003 and .004 to authorize entities regulated by TDI (such as title companies) to conduct business electronically with a party to the business and electronically deliver written communications to a party so long as the party has: (1) affirmatively consented to the electronic business or communication; or (2) received notice of the electronic business or communication and has not opted out.

Effective Date: Applies only to business conducted on or after September 1, 2023.

Underwriting Requirements: This does not affect our underwriting requirements, but if you choose to electronically conduct business or communicate, be aware of and comply with these new requirements.

#### **D. HB 1901 – Electronically Filing Annual Title Agent Audits with TDI**

Amends Texas Insurance Code §§ 2651.151(b) and .152(b) to remove the requirement for title agents to mail their annual audit reports to TDI. The amendments now require that agents "file" their annual audit reports with TDI, but they do not define the method of filing. Therefore, the amendments give agents flexibility to electronically file their audits with TDI.

Effective Date: September 1, 2023.

Underwriting Requirements: This does not affect our underwriting requirements, but be aware that your annual audit reports may now be electronically filed with TDI.

#### **E. HB 207 – Rural Non-Home Equity Refinance Loans and Pretended Sales**

Adds Texas Property Code § 41.0022, which is intended to enable individuals to obtain non-home equity cash-out loans secured by rural real property. Specifically, the bill states that a conveyance of rural homestead real property (as defined in Property Code § 41.002) from an individual to an entity (defined as a foreign or domestic corporation, LLC, or LP) in which the individual or his/her spouse has

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a direct or indirect ownership interest is not a sham or pretended sale under Section 50(c), Article XVI of the Texas Constitution, so long as the following requirements are met:

- The deed to the entity is recorded at least 30 days before the entity grants a mortgage secured by the rural real property;
- The individual does not reside on the parcel at the time of the conveyance;
- The real property conveyed to the entity is not contiguous to the real property on which the individual resides;
- The deed conveying the parcel does not contain a condition of defeasance; and
- The individual records an affidavit substantially in form found in § 41.0022(d) contemporaneously with the deed to the entity.

If the individual conveying the real property is married, his or her spouse must join in the deed and affidavit, and lenders may conclusively rely on that affidavit. The statute also provides that the individual executing the deed is estopped from claiming that the conveyance is a sham or pretended sale under the Texas Constitution or that the individual has not abandoned his or her homestead rights in the conveyed property.

Effective Date: September 1, 2023.

Underwriting Requirements: There is some concern that § 41.0022 may not be valid or is subject to attack because there is no corresponding amendment to the Texas Constitution providing an exception to the pretended sale prohibition. Therefore, written approval from WFG Texas Underwriting Counsel is required to insure a transaction relying on § 41.0022.

#### **F. HB 1382 – Online Auction of Real Property Taken In Execution of a Judgment**

Amends Texas Civil Practice and Remedies Code § 34.041 to allow public auctions of real property taken in execution of a judgment to be conducted online, as an alternative to conducting an in-person auction. The county commissioner's court may make rules governing such online sales, and those rules would go into effect 90 days after they are published in the real property records. The bill also states that these changes do not apply to non-judicial deed of trust foreclosure sales under Texas Property Code § 51.002, which must still be conducted in-person.

Effective Date: September 1, 2023.

Underwriting Requirements: Be aware that a sale of real property taken in execution of a judgment may be conducted online, but remember that such sales are considered extra-hazardous risks. If title is vested via such an online auction sale, confirm that all sale procedures comply with the rules adopted by the county commissioner's court and obtain written approval from WFG Texas Underwriting Counsel.

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## **G. SB 62 – Online Foreclosure Notices**

Amends Texas Property Code § 51.002(f-1) to require a county to prominently post a notice of foreclosure sale on the county's website where the county posts other auction information and that is free and publicly available. The county must also post the date, time, and location of the sale on that same website.

Effective Date: September 1, 2023.

Underwriting Requirements: When insuring title after a foreclosure sale, confirm that notice of the trustee or substitute trustee's sale and the details of the foreclosure sale were posted on the county's website, in addition to confirming that the standard foreclosure requirements have been met.

## **H. HB 255 – Additional Notary Regulations and Increased Notary Fees**

Amends Texas Government Code § 406.013, § 406.014, and § 406.024 to: (1) prohibit a notary from providing a copy of his or her seal to another person or affixing his or her seal to any document except to authenticate the notary's official act; (2) allow a notary to record the expiration date of a signer's United States passport or government ID if the passport or ID is presented to the notary as identification; and (3) increase notary fees for acknowledging deeds and other instruments, administering oaths, and other notarial acts from \$6 to \$10. The bill also requires the Secretary of State to adjust notary fees every five years to keep up with inflation.

Effective Date: September 1, 2023.

Underwriting Requirements: Be aware of the increased notary fees and ensure that the correct amounts are charged by your internal and external notaries.

## **I. HB 4765 – Inheritance Rights of Adoptive Parents Through Adoption by Estoppel**

Amends Texas Estates Code § 201.054(e) to formally define "adoptive parents" as parents of children adopted through adoption by estoppel (also known as "equitable adoption") in order to allow those adoptive parents to inherit from and through the adopted child as if the child were their natural child.

Effective Date: Applies only to the estate of a decedent who dies on or after September 1, 2023.

Underwriting Requirements: When preparing and analyzing Affidavits of Heirship, remember that "adoption" includes adoption by estoppel (an informal adoption shown by the existence of an agreement by the parent to adopt the child and performance by the child) and that if the adopted child predeceases the adoptive parents, those adoptive parents will inherit from their adopted child.

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**J. HB 886 – New Requirements for Recording POA Assessment Liens**

Amends Texas Property Code § 209.0094 to require a property owner’s association (“POA”) to provide two notices of delinquency to the property owner before the POA can file an assessment lien in the real property records. The first notice must be sent by first class mail and email to the property owner’s last known addresses. The second notice must be sent to the property owner’s last known mailing address by certified mail, return receipt requested, not earlier than the 30th day after the first notice is given. The POA cannot file an assessment lien until 90 days after it sends the second notice.

Effective Date: Applies only to an assessment that becomes delinquent on or after September 1, 2023.

Underwriting Requirements: Be aware of this new notice requirement for POA assessment liens, but it does not change our requirement to pay off and obtain a release of POA assessment liens.

**K. HB 2127 – State Preemption of Inconsistent Municipal Regulations a/k/a The “Death Star” Bill**

Intended to establish regulatory consistency between state law and municipal and county regulations affecting commerce in Texas. The bill amends provisions of the Texas Agriculture, Business & Commerce, Finance, Insurance, Labor, Natural Resources, Occupations, and Property Codes to preempt local regulation of matters regulated by those Codes. Additionally, the bill explicitly preempts local ordinances and regulations pertaining to evictions and forcible entry and detainer actions under Texas Property Code Chapter 24. The bill also adds Texas Civil Practice and Remedies Code Chapter 102A, which gives an individual or entity standing to sue a municipality, county, or government official to recover damages and attorneys’ fees caused by enforcement of local regulations in violation of the new preemption provisions and waives governmental immunity for such lawsuits.

Political Aspect: In July, the cities of Houston, San Antonio, and El Paso sued the State to stop the bill from going into effect, arguing that the bill violates provisions of the Texas Constitution. On August 30, 2023, a Travis County judge ruled that the bill is unconstitutional, and the State has appealed that ruling. However, the ruling did not prevent enforcement of the law. As a result, the law is still effective, even though it continues to be challenged in the courts.

Effective Date: September 1, 2023.

Underwriting Requirements: Be aware of this law and the ongoing litigation surrounding it, but it does not currently change our standard underwriting requirements. The full impact and scope of the law remains to be seen, and WFG will continue to update you if there is any effect on title insurance or change in our underwriting requirements.

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#### **L. HB 697 – Revisions to Seller’s Disclosures Regarding Fuel Gas Piping**

Amends Texas Property Code § 5.008(b) to revise the seller’s disclosures to state whether the property has fuel gas piping, black iron pipe, corrugated stainless steel tubing, and/or copper.

Effective Date: Applies only to contracts executed on or after September 1, 2023.

Underwriting Requirements: Be aware of this change to the seller’s disclosures and be prepared to assist your agents with the same. A copy of the revised seller’s disclosures is available on TREC’s website at <https://www.trec.texas.gov/forms/sellers-disclosure-notice-0>.

#### **M. SB 1650 – Revisions to Construction of Durable Powers of Attorney**

Amends Texas Estates Code Chapters 751 and 752 and Texas Property Code § 240.008 pertaining to durable powers of attorney (“DPOA”) to:

- Change the definition of “person” to “individual”;
- Suspend (rather than revoke) a DPOA upon appointment of a permanent guardian for the principal;
- Expand the definition of “business operation transactions” authority that may be given to a DPOA agent to include transactions in business entities other than just partnerships; and
- Enable a DPOA agent to execute a disclaimer without court approval if the agent is given such authority in the DPOA.

Effective Date: September 1, 2023.

Underwriting Requirements: This bill does not change our underwriting requirements with respect to DPOAs. However, be aware that a court appointing a permanent guardian for the principal may suspend – rather than terminate or revoke – a DPOA. Therefore, if the DPOA principal in your transaction is a ward in a permanent guardianship proceeding, examine the court orders issued in the guardianship to determine the status of the DPOA.

**If you have any questions regarding any of these bills, please contact Texas Underwriting Counsel at [SWLegal@wfgtitle.com](mailto:SWLegal@wfgtitle.com).**

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