

FILED

OCT 29 2012



Docketed by: HT

OFFICE INSURANCE REGULATION

KEVIN MCCARTY

IN THE MATTER OF:

WFG NATIONAL TITLE
INSURANCE COMPANY,
a South Carolina Corporation.

Case No.: 129584-12-CO

ORDER

THIS CAUSE came on for consideration as a result of the filing of a petition for rate deviation by WFG NATIONAL TITLE INSURANCE COMPANY, INC. (hereinafter referred to as "WFG") with the STATE OF FLORIDA, OFFICE OF INSURANCE REGULATION (hereinafter referred to as the "OFFICE"). Pursuant to Section 627.783, Florida Statutes, WFG submitted a petition for rate deviation for the OFFICE's review and approval. After a complete review of the entire record, and upon consideration thereof, and being otherwise fully advised in the premises, the OFFICE, hereby finds as follows:

1. The OFFICE has jurisdiction over the subject matter of this proceeding.
2. WFG is a foreign insurer domiciled in South Carolina authorized to transact the business of title insurance in the State of Florida and is subject to the jurisdiction and regulation of the OFFICE pursuant to the Florida Insurance Code.
3. WFG made a filing with the Office seeking approval of its Mortgage Priority Guarantee product form (hereinafter "MPG"). After a thorough review, the form was subsequently approved by the Office and is attached hereto for reference.

4. Subsequently, WFG filed with the Office a "Verified Petition for Rate Deviation Pursuant to Section 627.783, Florida Statutes" to establish a rate for the previously approved MPG forms. The Petition included actuarial support for a specific deviation from the adopted rate to a rate of One Hundred Twenty Five Dollars (\$125.00) for the Mortgage Priority Guarantee form.

5. With recent economic trends and record mortgage defaults, banks are looking for alternative ways to avoid foreclosure. At the request of consumer advocates and the federal government, banks and consumers are increasingly looking to modify or amend existing mortgages. Additionally, Fannie Mae and Freddie Mac rules require either the issuance of title insurance or subordination from all junior lien holders when modifying a loan. As a result, many lending institutions are seeking a product that is less expensive to issue than a traditional loan policy but, assures that the validity, enforceability or priority of the recorded mortgage described therein has not been diminished or lost by reason of the recorded amendments or modifications to the existing mortgage. To fill this niche, WFG as well as other title insurance underwriters have sought approval to deviate from the currently adopted title insurance rate in setting the rate for the MPG product that is the subject of this Order.

6. By design the MPG product provides a low cost alternative product to lenders intent on protecting their interests when engaging in mortgage modifications or amendments. In doing so, the MPG deviates from traditional title insurance coverage and assures only that the validity, enforceability or priority of a lender's existing mortgage is not altered by the underlying mortgage's modification. However, the policy does not insure or make any assurances or guarantees regarding the status of ownership or title in the lands described in the modified or amended mortgage.

7. A review of the MPG product as presented by WFG to the OFFICE reveals that it is a contract of indemnity against actual monetary loss or damage sustained by the insured lender when modifying or amending an existing mortgage. As such, the MPG coverage is much more restrictive than a traditional loan policy and the process for issuing such a policy is simpler and less involved resulting in significantly less expense than the issuance of a traditional loan policy. Additionally, as the number of perils covered is reduced, the risk of loss to the insurer is diminished.

8. After review, the Office finds that a deviation from the existing rate found in Rule 690-186.003, Florida Administrative Code is justified and amends the rate that WFG may charge to its proposed flat rate of One Hundred Twenty Five Dollars (\$125.00) for its Mortgage Priority Guarantee product.

IT IS THEREFORE ORDERED:

Effective upon the date of execution of this Order by the Commissioner, the Verified Petition for Rate Deviation Pursuant to Section 627.783, Florida Statutes, filed by WFG which is attached to this order is hereby approved;

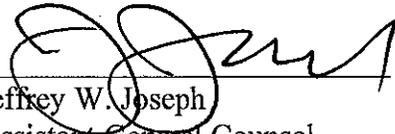
DONE and ORDERED this 29 day of October, 2012.




Kevin M. McCarty
Commissioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing ORDER has been furnished by U.S. Mail to: WFG National Title Insurance Company, Inc. this 29th day of October, 2012.


Jeffrey W. Joseph
Assistant General Counsel
Office of Insurance Regulation
Legal Services Office
612 Larson Building
200 E. Gaines Street
Tallahassee, Florida 32399-4206

Copies to:

Peter Rice
200 East Gaines Street
Tallahassee, FL 32399-4206

Jeffrey W. Joseph
Assistant General Counsel
200 East Gaines Street
Tallahassee, FL 32399-4206

APPROVED

Date Received: 08/30/2012 Date Of Action: 09/10/2012

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WFG National Title Insurance Company
a Williston Financial Group company

August 29, 2012

Peter W. Rice, CPCU, ARM
Title Insurance Coordinator
Florida Office of Insurance Regulation
200 East Gaines Street
Tallahassee, FL 32399-0330

Re: Submit filings: Mortgage Priority Guarantee Policy

Dear Mr. Rice,

Submitted herewith are WFG National Title Insurance Company's proposed Mortgage Priority Guarantee Policy and Verified Petition for Rate Deviation.

Please advise if any changes are required.

Thank You,

Joseph J. Tschida

Joseph J. Tschida
State Underwriting Counsel & VP

Joseph J. Tschida
State Underwriting Counsel & Vice President
801 International Parkway, 6th Floor, Lake Mary, FL 32746
Direct Ph (407) 562-1267 | Cell (407) 399-7553
JTschida@wfnationaltitle.com

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Date Received: 08/30/2012 Date Of Action: 09/10/2012
FL OFFICE OF INSURANCE REGULATION



FORM NO. 1640-4 with FLORIDA MODIFICATIONS (REV. 03/09)

ORDER NO:
REFERENCE
NO:

MORTGAGE PRIORITY GUARANTEE PLUS

LIABILITY

FEE \$

SUBJECT TO THE PROVISIONS, CONDITIONS AND STIPULATIONS
HEREIN,

WFG National Title Insurance Company

A Corporation, herein called the company,

GUARANTEES

HEREIN CALLED THE ASSURED, AGAINST LOSS OR DAMAGE, NOT EXCEEDING THE LIABILITY AMOUNT STATED ABOVE, AND COSTS, EXPENSES, AND ATTORNEY FEES ARISING BY REASON OF THE ESTABLISHMENT BY ENTRY OF FINAL ORDER, JUDGMENT, OR DECREE OF A COURT OF COMPETENT JURISDICTION THAT THE VALIDITY, ENFORCEABILITY OR PRIORITY OF THE MORTGAGE DESCRIBED HEREIN HAS BEEN DIMINISHED OR LOST BY REASON OF THE MODIFICATION OR AMENDMENT, EXECUTED BY _____ AND _____, DATED AND RECORDED _____ OF OFFICIAL RECORDS, TO THE INDEBTEDNESS SECURED BY THE RECORDED MORTGAGE DESCRIBED AS:

THIS GUARANTEE DOES NOT ASSURE THE VALIDITY, ENFORCEABILITY OR PRIORITY OF THE ABOVE DESCRIBED MORTGAGE BUT ONLY ASSURES THAT THE VALIDITY, ENFORCEABILITY OR PRIORITY OF THE MORTGAGE, IF ANY, HAS NOT BEEN DIMINISHED OR LOST BY REASON OF THE RECORDED MODIFICATION.

THIS GUARANTEE DOES NOT ASSURE THE STATUS OR OWNERSHIP OF THE TITLE TO THE ESTATE OR INTEREST IN THE LAND DESCRIBED IN THE MORTGAGE.

THE COVERAGE GIVEN BY THIS PAGE IS NOT VALID UNLESS THIS PAGE IS ACCOMPANIED BY THE GUARANTEE COVER CONTAINING THE GUARANTEE CONDITIONS AND STIPULATIONS.

DATED: AT 8:00A.M.

WFG NATIONAL TITLE INSURANCE COMPANY

BY: _____

President

ATTEST: _____

Secretary

GUARANTEE CONDITIONS AND STIPULATIONS

1. Definition of Terms

The following terms when used in this Guarantee mean:

(a) "Assured": the party or parties named as the Assured in this Guarantee. The term "Assured" also includes

(i) the owner of the indebtedness secured by the mortgage and each successor in ownership of the indebtedness reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Assured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of any adverse claim or other matter assured against by this Guarantee;

(ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness, or any part thereof, whether named as an Assured herein or not;

(b) "date": the effective date;

(c) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

2. Defense and Prosecution of Actions: Duty of Assured to Cooperate

(a) Upon written request by the Assured and subject to the options contained in Section 4 of these Conditions and Stipulations, the Company at its own cost and without unreasonable delay, shall provide for the defense of an Assured in litigation in which any third party asserts a claim adverse to the assurance given herein that the priority of the mortgage described herein has not been diminished or lost by reason of the modification or amendment to the indebtedness. The Company shall have the right to select counsel of its choice to represent the Assured and 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 Assured in the defense of matters not assured by this Guarantee.

(b) The Company shall have the right to institute and prosecute any action or proceeding to establish that the priority of the mortgage has not been diminished or lost by the modification. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this Guarantee permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the Assured hereunder shall secure to the Company the right to prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the Assured for this purpose. Whenever requested by the Company, the Assured shall furnish all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement and (ii) in any other act which in the opinion of the Company may be necessary or desirable to establish that the priority of the described mortgage has not been diminished or lost by reason of the modification. If the required cooperation shall not be furnished, the Company's obligations to the Assured under the Guarantee shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation with regard to the matter requiring cooperation.

3. Notice of Loss - Limitation of Action

A statement in writing of any loss or damage for which it is claimed the Company is liable under this Guarantee shall be furnished to the Company within sixty days after the loss or damage shall have been determined, and no right of action shall accrue to the Assured under this Guarantee until thirty days after the statement shall have been furnished, and no recovery shall be had by the Assured under this Guarantee unless action shall be commenced thereon within two years after expiration of the thirty day period. Failure to furnish the statement of loss or damage or to commence the action within the times hereinbefore specified, shall be a complete bar against maintenance by the Assured of any action under the Guarantee.

4. Option to Pay, Settle or Compromise Claims

The Company shall have the option to pay, settle or compromise, for or in the name of the Assured, any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee, or the Company shall have the option to purchase the indebtedness secured by the mortgage. The purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company. In the event after notice of claim has been given to the Company, the Company offers to purchase the indebtedness, the owner of the indebtedness shall transfer and assign the indebtedness and the mortgage to the Company upon payment of the purchase price.

5. Limitation of Liability - Payment of Loss

(a) The liability of the Company under this Guarantee shall be limited to the amount of actual loss sustained by the Assured because of reliance upon the assurances herein set forth, but in no event shall the liability exceed the amount of the liability stated on the face page hereof.

(b) No claim for loss or damage shall arise or be maintainable under this Guarantee (i) if the Company after having received notice of the claim settles or otherwise removes the claim within a reasonable time after receipt of the notice, or (ii) for liability voluntarily assumed by the Assured in settling any claim or suit without written consent of the Company.

(c) All payments under this Guarantee, except for attorney's fees as provided for in Section 2 hereof, shall reduce the amount of the liability hereunder pro tanto, and no payment shall be made without producing the Guarantee for endorsement of the payment unless the Guarantee be lost or destroyed, in which case proof of the loss or destruction shall be furnished to the satisfaction of the Company.

(d) When liability has been definitely fixed in accordance with the conditions of this Guarantee, the loss or damage shall be payable within thirty days thereafter.

6. Subrogation Upon Payment or Settlement

Whenever the Company shall have settled a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured, and it shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If the payment does not cover the loss of the Assured, the Company shall be subrogated to the rights and remedies in the proportion which the payment bears to the amount of the loss. The Assured if requested by the Company shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect the right of subrogation, and shall permit the Company to use the name of the Assured in any transaction or litigation involving the rights or remedies.

7. Exclusions from Coverage

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

(a) Defects, liens, encumbrances, adverse claims, or other matters:

(i) created, suffered, assumed or agreed to by the Assured;

(ii) not known to the Company, not recorded in the public records at date of this Guarantee, but known to the Assured and not disclosed in writing to the Company by the Assured prior to the date of this Guarantee;

(iii) Attaching or created subsequent to date of this Guarantee;

(b) Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to date of this Guarantee and is not financed in whole

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or in part by proceeds of the indebtedness secured by the mortgage which at date of this Guarantee the Assured has advanced or is obligated to advance; or

(c) Any claim, which arises out of the transaction modifying or amending the mortgage described herein or the indebtedness secured thereby by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that it is based on:

(i) the transaction being deemed a fraudulent conveyance or fraudulent transfer; or

(ii) the subordination of the interest of the Assured as a result of the application of the doctrine of equitable subordination; or

(iii) the transaction being deemed a preferential transfer except where the preferential transfer results from the failure (1) to timely record the instrument(s) amending the mortgage or indebtedness; or (2) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

8. Arbitration

Unless prohibited by applicable law, arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association may be demanded if agreed to by both the Company and the Assured. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, and service of the Company in connection with its issuance, the breach of a provision of this Guarantee or other obligation. Arbitration pursuant to this Guarantee and under the Rules in effect on the date the demand for arbitration is made or, at the option of the Assured, the Rules in effect at Date of this Guarantee shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. The law of the situs of the land shall apply to arbitration under the Title Insurance Arbitrations Rules.

9. Guarantee Entire Contract

Any action or actions or rights of action that the Assured may have or may bring against the Company arising out of the subject matter hereof must be based on the provisions of this Guarantee. No provision or condition of this Guarantee can be waived or changed except by a writing endorsed or attached hereto signed by the President, a Vice President, the Secretary, an Assistant Secretary or other validating officer of the Company.

10. Notices, Where Sent

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at 12909 SW 68th Parkway, Suite 350 Portland, OR 97223, Phone: (503) 387-3636 or to the office which issued this Guarantee.