

## WFG Underwriting Bulletin



To: All Florida Agents of WFG National Title Insurance Company  
From: WFG Florida Underwriting Department  
Date: May 4, 2016  
Bulletin No. FL2016-07  
Subject: Stripping Liens (Junior Mortgages) In Bankruptcy

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The purpose of this Bulletin is to clarify WFG's position regarding bankruptcy orders stripping liens (junior mortgages) in light of the U.S. Supreme Court's decision in the case of *Bank of America v. Caulkett*, 135 S.Ct. 1995 (SC 2015).

When a person files bankruptcy, the bankruptcy does not automatically remove mortgages, judgments, and other liens from the debtor's property. All that the bankruptcy does is discharge the debt so that the debtor is no longer personally liable for the debt. Mortgages, judgments, and other liens - for which the debt was discharged, remain liens on the property. However, one way to remove a junior mortgage from property in a bankruptcy is with an order stripping the junior mortgage from the property. This type of bankruptcy order is commonly referred to as an order stripping liens or a stripping lien order. The factual basis for stripping a junior mortgage from property is that the amount owed on the first mortgage exceeds the value of the property so that the junior mortgage is totally unsecured.

There has been a legal debate for many years as to whether stripping liens is authorized in Chapter 7 bankruptcies. The U.S. Supreme Court settled that debate on June 1, 2015 when it decided the *Bank of America v. Caulkett* case. In that case, the U.S. Supreme Court held that a debtor in a Chapter 7 bankruptcy may not void or strip-off a junior mortgage under §506(d) of the bankruptcy code when the debt owed on the senior mortgage exceeds the value of the property. Due to the *Bank of America v. Caulkett* decision, WFG will not rely on orders stripping liens in current Chapter 7 bankruptcies to insure over junior mortgages. However, WFG will consider relying on an order stripping a junior mortgage in an old Chapter 7 bankruptcy if the Chapter 7 bankruptcy was closed one year prior to the date of the *Bank of America v. Caulkett* decision. You must obtain prior written approval from WFG's Underwriting Department to insure over a junior mortgage stripped in an old Chapter 7 bankruptcy.

The *Bank of America v. Caulkett* case did not affect the authority to strip junior mortgages in Chapter 13 bankruptcies. The reason for the different treatment of orders stripping liens in Chapter 7 bankruptcies and Chapter 13 bankruptcies is due to a bankruptcy code provision that authorizes a debtor in a reorganization bankruptcy such as Chapter 13 to modify the rights of a holder of a junior mortgage when there is no equity in the property to secure that junior mortgage. It is that provision of the bankruptcy code that authorizes a Chapter 13 debtor to

modify a junior mortgage to strip it from the property when the value of the property is insufficient to secure the entire amount of the junior mortgage. Chapter 7 bankruptcies are not reorganization bankruptcies like Chapter 13s so the bankruptcy code provision that authorizes a Chapter 13 debtor to modify a junior mortgage is not available in Chapter 7 bankruptcies. While WFG will not rely on orders stripping liens in current Chapter 7 bankruptcies, we will continue to rely on orders stripping liens in Chapter 13 bankruptcies to insure over stripped junior mortgages.

The requirements to insure over a junior mortgage stripped in a Chapter 13 bankruptcy are, as follows:

1. Record a certified copy of the Motion To Strip the Junior Mortgage. You must confirm that the mailing matrix in the bankruptcy case shows that a copy of the Motion was mailed to the lender - whose mortgage was stripped, the bankruptcy Trustee, and to all creditors.
2. Record a certified copy of the Notice of Hearing on the Motion To Strip the Junior Mortgage. You must confirm that the mailing matrix in the bankruptcy case shows that a copy of the Notice of Hearing on the Motion To Strip the Junior Mortgage was mailed to the lender - whose mortgage was stripped, the bankruptcy Trustee, and to all creditors.
3. Record a certified copy of the Order Granting the Motion to Strip the Junior Mortgage. You must confirm that the mailing matrix in the bankruptcy case shows that a copy of the Order Granting the Motion to Strip the Junior Mortgage was mailed to the lender - whose mortgage was stripped, the bankruptcy Trustee, and to all creditors.
4. Review the bankruptcy docket to confirm that the Order Granting the Motion to Strip the Junior Mortgage was not appealed.
5. Record a certified copy of the debtor's discharge. Even after an order stripping a junior mortgage is entered, that mortgage remains a lien on the property until the debtor receives a discharge. That is why all orders stripping liens are conditioned on the debtor obtaining a discharge in the bankruptcy. Therefore, if the debtor has not received a discharge, you cannot rely on the order stripping lien to insure over that junior mortgage.
6. You must obtain prior approval from WFG's Underwriting Department to insure over a junior mortgage stripped in a Chapter 13 bankruptcy.

For junior mortgages stripped in a Chapter 20 [a Chapter 7 bankruptcy converted to or coupled with a Chapter 13 bankruptcy] where a discharge was entered in the Chapter 7 prior to conversion to the Chapter 13, and where the junior mortgage will be stripped in the Chapter 13, in addition to the above requirements, WFG requires that you record proof that the debtor made all payments and completed all requirements of the Chapter 13 Plan.

**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.**