

Dear Stewart Partners,

In this week's Mid-Week Update, we are providing you with information and some tips regarding insuring multiple mortgages, as well as the Rhode Island Supreme Court's Ethics Advisory Panel's recent opinion regarding seller fees charged by buyer's attorneys. We also provide a link to an article about the value of title insurance written by Diane Tomb, the CEO of ALTA.

Additionally, in case you missed it, we're providing a few links to recent communication sent by Stewart to its agents. The first is a link to a recent Stewart Bulletin pertaining to incorporating endorsements by reference into policies. The remaining are links to several Special Alerts recently issued by the company.

Last but not least, we've included some information about upcoming education opportunities.



Insuring More than One Mortgage and Related Agreements – by:
Katherine Fletcher, Esq., Associate CT State Underwriting Counsel &
Associate Senior Underwriting Counsel

Often, we are asked to insure more than one mortgage in the same transaction. By way of example, a property owner may obtain a term loan and an equity line of credit simultaneously when purchasing a property. In this case, absent an agreement otherwise, priority with respect to the mortgages is determined by the order of recording of the mortgages.

In some transactions, a property owner desires to obtain additional financing or refinance an existing loan, without paying off an existing loan. In such cases, the new lender may require the existing lender to subordinate their lien position. A subordination agreement is necessary since the existing mortgage has priority over the new mortgage by virtue of its prior recording.

A subordination agreement is a document that establishes the priority of liens or claims against a specific asset. By subordinating their claim, an existing lender agrees to allow the new lender to have a higher priority lien on the property. This means that in the event of foreclosure or sale of the property, the new lender's claim will be satisfied before the existing lender's claim. The terms and conditions of a subordination agreement may vary depending on the specific circumstances and the parties involved. It is a legally binding contract that must be agreed upon by all relevant parties, including the existing lender, the

new lender, and the borrower/property owner. Occasionally, lenders whose mortgages have priority based on recording order will still enter into a subordination agreement or an intercreditor agreement with each other and the mortgagor to establish, for example, guidelines among the parties in the event of default or other future events related to the borrower and property. This is seen more commonly in a commercial setting.

Once proposed priority has been established (either by recording order or a subordination agreement), we need to consider placement of the mortgages on the policies. Of course, all mortgages should be shown on Schedule B of the owner's policy. With respect to the loan policies, placing the mortgage on the correct schedule is very important, and care must be taken to make sure that mortgages that take a priority position over an insured mortgage are listed as exceptions on a subordinate loan policy. For example, if you are closing a transaction where borrower is granting a first and second mortgage, on the loan policy insuring the first mortgage, the first mortgage is listed on Schedule A as the insured mortgage. The subsequent mortgage or second mortgage is shown on Schedule B, Part II of the policy as a subordinate matter.

On the policy to be issued for the second mortgage, the Schedule A of that policy, will list the second mortgage as the insured mortgage. The first mortgage is then shown on Schedule B, Part I, as an exception. Schedule B, Part I of the policy lists matters that the property is subject to and take priority over the insured mortgage. Everything on Schedule B, Part I is an exception to coverage. Schedule B, Part I should not be confused Schedule B, Part II, which must only contain matters that are subordinate to the insured interest in Schedule A.

In situations where more than one mortgage is being granted to the same lender, the lender might require a separate policy for each mortgage. In that case, the scenario above is followed. If the lender requires one policy for all its mortgages, please contact your Stewart underwriter for guidance.

Every so often, two or more lenders make different loans secured by the same land and desire the mortgages securing the loans to be of equal lien priority (although the loans may differ in amounts, terms, etc.). Mortgages sharing priority are often referred to as *pari passu* mortgages ("pari passu" refers to equal footing). To avoid one mortgage being superior to the other because of recording order, the lenders will execute an intercreditor agreement which describes the equal priority of the mortgages and other aspects such as loan payments, foreclosure, etc. The lenders may request an ALTA 45-06 (Pari Passu Mortgage – Loan Policy) Endorsement. In summary, this endorsement insures against loss or damage sustained by the insured lender by reason of: (a) the invalidity or unenforceability of the lien of the insured mortgage resulting solely from the provisions of a *pari passu* mortgage or intercreditor agreement establishing lien priority; or (b) the lack of equal lien priority of the insured mortgage to the other *pari passu* mortgages. If this endorsement is requested, please contact your Stewart underwriter for specific underwriting requirements.



Rhode Island Ethics Advisory Panel Opinion on Seller Fees Charged by Buyers' Attorneys – by: Eileen C. O'Shaughnessy

Esq., RI State Underwriting Counsel

The Rhode Island Supreme Court's Ethics Advisory Panel (the "Panel") has issued an opinion that so-called "seller" fees that buyers' attorneys add to settlement statements in real estate closings run afoul of Rule of Professional Conduct 1.5 (the "Rule"). The panel cited fees including, but not limited to, disbursement fees, discharge tracking fees, wire fees, and courier fees.

Rule 1.5 requires that attorney's fees and charges for expenses must be "reasonable under the circumstances." To be reasonable, these charges must either reflect "a reasonable amount to which the client has agreed in advance" or "the cost incurred by the lawyer." In addition, Rule 1.5(b) requires that lawyers convey fee and expense information to new clients in writing prior to or as near as possible to the beginning of the representation.

The Panel found that charging such fees without securing agreement and/or charging more than the cost to the lawyer constitutes unprofessional conduct. Because fees that appear on a closing statement charged to the seller by the buyers' attorney are frequently not agreed upon in advance and many of the charges exceed a reasonable amount for the reimbursement to the buyers' attorney, the panel found that those fees violated Rule 1.5.

The Ethics Advisory Panel was established by the Supreme Court in 1986 to provide Rhode Island attorneys with confidential advice on prospective behavior based on the Rules of Professional Conduct. Although attorneys are not required to abide by panel opinions, those who do so are fully protected from any subsequent charge of impropriety.

Follow this link to read the full opinion: [75-003-24.pdf \(rilawyersweekly.com\)](#)



Opinion: Title Insurance Matters

In a recent article written by ALTA's CEO Diane Tomb for HousingWire, Ms. Tomb responds to the Biden Administration's recent announcement to revive a previously abandoned pilot program that would waive the requirements for lender's title insurance on certain residential refinances. Ms. Tomb accurately articulates that critics of title insurance have a limited understanding of the importance of title insurance by mistakenly referring to the title industry's lower claims rates compared to other types of insurance. Ms. Tomb explains how title insurance is quite different than other types of insurance and offers several examples of the benefits of title insurance. You can read the full article here: [Opinion: Title insurance matters. Here's why. - HousingWire](#)



In Case You Missed It

Bulletin: MU2024002: Incorporating Endorsements by Reference into a Policy: Save Time and Trees!

Stewart recently published an underwriting bulletin about incorporating endorsements by reference into a policy, rather than attaching them. This saves time and paper and is often preferred by customers. Depending on the policy form, there are different ways to incorporate endorsements by reference.

Please see the full bulletin for details:

[Bulletin: MU2024002](#)

If you have any questions relating to this bulletin, please contact a Stewart underwriter.

Special Alert: SA2024143

On May 14, 2024, Stewart issued a Special Alert for property located at 50 Colcord Hill Road, Effingham, NH. Should you have or receive an order for this property or for the parties identified in the Special Alert, please contact your local underwriting counsel immediately and do not close the transaction without further approval.

Please see Special Alert for complete details:

[Special Alert: SA2024143](#)

Special Alert: SA2024136

On May 1, 2024, Stewart issued a special alert involving property located in 132 Sargent Street, Newton, Massachusetts. Should you have or receive an order for this property or for the parties identified in the Special Alert, please contact your local underwriting counsel immediately and do not close the transaction without further approval.

Please see Special Alert for complete details:

[Special Alert: SA2024136](#)

Special Alert: SA2024142

On May 10, 2024, Stewart issued a Special Alert relating to phishing emails using the fictitious names of Meritus Roro and Renee Watkins purporting to come from Stewart. These are phishing emails and not from Stewart.

Please see Special Alert for complete details:

[Special Alert: SA2024142](#)



Upcoming Educational Opportunities

NELTA Lunch and Learn Series: Problems with Private Ways

On May 29, 2024, NELTA will host a 1 hour webinar on Private Ways. This webinar is free to members of NELTA and \$50 for non-members. CLE credit will be available for CT, ME, NH, VT and RI. For more information and to register, follow this link: [2024 May Lunch and Learn Webinar](#)

ALTA Insights Webinar: Best Practices to Identify Phishing Emails

On June 12, 2024, from 1PM – 2PM ALTA will be hosting a free 1 hour webinar focused on phishing email. Phishing email is one way criminals attempt to garner sensitive information or data. Training and knowledge is one of the best security control that agents and firms can implement. To register for this webinar, follow the following link: [Register Today](#).



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