



Dear Stewart Partners,

In this week's Mid-Week Update, we are providing information on foreclosure concerns in closings in Connecticut and updates on Vermont's Remote Online Notarization rules.

Also, continuing with our endorsement education theme that we kicked off last week, this week we are highlighting information about the endorsements in the ALTA 18 series known as the Tax Parcel endorsements. Lastly, we've provided a link to an upcoming webinar hosted by ALTA on Best Practices to avoid Phishing emails. The webinar is this afternoon, but there is still time to register.



**Connecticut Titles Affected by Foreclosures** by: Nancy Walkley, Esq., Associate Senior Underwriting Counsel

It is difficult to avoid exposure to foreclosures in the history of title chains over the course of one's practice. A title search may reveal that the property was the subject of a foreclosure when a search is requested for a refinance or sale transaction. We suggest that if such an action is disclosed in the chain within the prior 10 years of a title search an agent should review the judicial proceedings (most are available online at [ct.jud.gov](http://ct.jud.gov)) to confirm the foreclosure complied with Connecticut's regulations and was properly completed. Confirming compliance is not possible by reviewing the title documents alone. This additional confirmation is absolutely necessary if there have been no arm's length transactions supported by a warranty deed to a bona fide purchaser for value. If you know a foreclosure action is currently pending, or the seller is a bank, you should always request a foreclosure search in addition to a title search.

The following provides guidance in some common scenarios you may face involving foreclosures in a chain of title:

Current transaction where the seller is in foreclosure and a lis pendens has been recorded in the land records but action hasn't gone to judgment:

All mortgages and other liens encumbering the title must be paid off and discharged. As the closing attorney, you will need payoff letters or statements as you would for any other closing. In the case where a suit has been commenced, be sure to verify that the payoff includes legal fees, committee fees, court fees, etc. If the payoff is provided by foreclosure counsel directly, rather than the holder of the mortgage, confirm that the payoff terms are unequivocal and all litigation fees are included. If the payoff contains language that "it is not final" or that it is subject to change (we often see this), the payoff may not be relied

upon to issue policies without exception. The reason for this is that reliance on a non-final payoff could result in the lender rejecting funds or refusing to discharge, claiming additional monies are due. Please be aware that a lender's payoff statements cannot be relied upon if judgment has been entered, so the docket should be monitored to confirm that the case has not proceeded to judgment prior to closing.

As part of the closing, you will need to obtain and record a release of the lis pendens, and the file should be monitored post-closing to confirm that the mortgage holder records a discharge of the mortgage. Further, the foreclosure action will need to be withdrawn and the case closed.

In the event judgment enters prior to the closing, but title has not passed yet (this can be determined by reviewing the court file and docket sheet) there are typically two options. The first option is for the case to be re-opened and judgment vacated. If the judgment is vacated, the procedure described above can be followed. Alternatively, one could obtain a Satisfaction of Judgment from plaintiff's counsel based on payment made per a payoff statement, file evidence of the satisfaction with the court, and record a certified copy of it along with certified copy of the Judgment of Foreclosure on land records. These will release the mortgage and the lis pendens. Please note, these documents will usually not be provided until after funds are delivered to lender or lender's counsel. This is effectively a redemption by the owner, and all other items on title still need to be paid off and released.

If the case is reopened, post lis pendens filings in redemption scenarios should be addressed as follows: if the owner redeems, everything goes back to status quo, even post lis pendens filings, but if a non-owner redeems (only allowed in a strict foreclosure proceeding) then post lis pendens filings are extinguished with the exception of federal tax liens as discussed below.

If buying from bank with a completed foreclosure:

Make sure no post lis pendens IRS lien had been filed. If a lien has been filed, a determination of its validity must be made. To determine the validity, an examination of the timing of the foreclosure and lien filing must be undertaken as follows:

1. If in foreclosure by sale, the IRS lien will still be foreclosed out after a sale but IRS retains right to make a claim on proceeds before they are distributed.
2. If in strict foreclosure, lien may still be foreclosed out provided the following rules are followed: if the lien was not filed more than 30 days prior to title passing, or if more than 30 days prior a special notice was given to the IRS. To establish in the record title that the IRS lien was eliminated in the foreclosure based on the above rule, an affidavit of facts spelling out the particulars needs to be recorded.

By way of example: Title vests in plaintiff May 1, so divestment date was April 30. Any IRS lien filed in the month of April is extinguished automatically. But if a lien was filed on March 31 or earlier, notice to IRS must be given.

Foreclosures in any jurisdiction present special risks and underwriting issues. Should you have any questions, please contact your Stewart Underwriting partner.



## **RON Developments in Vermont** by: Jill Spinelli, Esq., Vermont Counsel and Associate Senior Underwriter

In 2020, following the COVID-19 pandemic, the Vermont Secretary of State issued emergency rules enabling the use of remote notarization. These rules have been renewed every 180 days since then in substantially the same form. However, in March of this year, the emergency rules were renewed again, but with consequential changes that permit the notarial act to occur on electronic records rather than just paper records. These rules authorize Notaries to perform electronic notarial acts for both remotely located individuals (RLI) and in-person. While this is progress for remote online notarization (RON) advocates, logistical impediments still exist that make these transactions very uncommon in Vermont.

The following are the substantive changes to the emergency rules as summarized by the National Notary Association:

### **Definition Changes:**

1. Modifies the definition of “remote notarial act” to include both tangible and electronic records.
2. Added definitions for “communication technology,” “digital certificate,” “electronic,” “electronic notarial act,” “electronic notarial certificate,” “electronic signature,” “electronic record,” “notarial certificate,” “Notary Public,” “signature,” and “tamper-evident.”

### **Requirements for Special Endorsement:**

1. Requires a Notary to obtain an Electronic Notary special endorsement in order to perform notarial acts on electronic records, whether in the presence of the individual or for a remotely located individual.
2. Temporarily suspends the requirement to obtain an Electronic Notary special endorsement to perform notarial acts for remotely located individuals.
3. States that to qualify for an Electronic Notary special endorsement, a Notary must:  
(a) hold a current Notary Public commission in good standing, (b) attest to selecting and using communication and tamper-evident technology that complies with requirements of the rules, and (c) pay all required application fees.
4. Requires a Notary to renew the Electronic Notary special endorsement commission every 2 years at the same time the Notary renews their Notary Public commission.

### **Requirements for Notarial Acts on Electronic Records:**

1. Requires a Notary performing a notarial act on an electronic record to be physically located in Vermont at the time the notarial act is performed.
2. Authorizes a Notary holding an Electronic Notary special endorsement to perform authorized notarial acts relating to electronic records only if the individual personally appears before the Notary at the time of the notarial act in accordance with 26 VSA Section 5364 or remotely in accordance with Part 4 of the rules.
3. Requires a Notary authorized to perform notarial acts on an electronic record to verify the identity of the individual prior to performing a notarial act in accordance with 26

VSA Section 5365 or, if for a remotely located individual, in accordance with Part 4 of the rules.

4. Prohibits a Notary from basing identification of an individual solely on familiarity with an individual's signature or an electronic verification process that authenticates the individual's electronic signature.
5. Requires an electronic notarial act to be evidenced by an electronic notarial certificate which must (a) be affixed to or logically associated with the electronic record and (b) contain the information required under 26 VSA Sections 5367 and 5380.
6. Requires a Notary performing a notarial act on an electronic record to affix to or logically associate with the electronic notarial certificate the Notary's electronic signature and electronic official stamp, if the Notary uses one, by use of a digital certificate.
7. Requires a tamper-evident technology selected by a Notary to perform electronic notarial acts to be capable of (a) affixing or attaching the Notary's electronic signature to the electronic record in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic record evident and (b) utilizing a valid digital certificate issued by a third-party provider.
8. Prohibits a Notary from performing a notarial act with respect to an electronic record if the digital certificate (a) has expired, (b) has been revoked or terminated by the issuing or registering authority, (c) is invalid, or (d) is incapable of authentication.
9. Requires a Notary authorized to perform electronic notarial acts to use the same electronic signature and electronic official stamp, if the Notary uses one, for all electronic notarial acts.
10. Require a Notary to submit to the Office a copy of the Notary's electronic signature and electronic official stamp, if using.
11. Requires the Notary's electronic signature and electronic official stamp, if the Notary uses one, to be unique to the Notary.

**Requirements for Additional Security Measures:**

1. Provides that a Notary's electronic signature and electronic official stamp, if the Notary uses one, must be retained under the Notary's sole control and access.
2. Prohibits a Notary from allowing any other individual to use the Notary's electronic signature or electronic official stamp, if using.
3. Prohibits a Notary's employer from permitting the use of a Notary's electronic signature or electronic official stamp, if the Notary uses one, by anyone except the Notary.
4. Prohibits a Notary from disclosing any access information used to affix the Notary's electronic signature or the electronic image of the Notary's official stamp, if the Notary uses one, except when requested by the Office or a designee, a judicial subpoena, and, with precautions, electronic document preparation and transmission vendors.
5. Provides that control of security aspects, such as, but not limited to, passwords, token devices, biometrics, PINS, phrases, software on protected hardware must remain under the sole control of the Notary.

The most recent emergency rules can be found here, and are effective until September, 2024, unless renewed:

<https://sos.vermont.gov/media/rc3idrqn/final-emergency-rules-for-remote-and-electronic-notarial-acts.pdf>

As set forth above, the new emergency rules authorize RON and require the Notary to be responsible for selecting a technology that is compliant with the rules. As summarized above, the rules require the following steps:

1. Obtain a Special Endorsement to your notary commission for electronic notarial acts;
2. Obtain digital signature & digital notarial stamp; and
3. Select a digital platform that meets the standards set forth in the emergency rules.

At this time, there is currently no digital platform provider that has been designated compliant with the new emergency rules. As such, even though RON's are legal, transactions are rare to the extent they exist at all. A further complication is that Vermont still does not have uniform digital recording capabilities, so even if a RON does occur, the Notary must still print all of the digitally signed and notarized documents in order to record them.

We anticipate further developments with respect to RON in the next several months and that companies that provide a digital platform like NotaryCam, Pavasos, and Docusign will begin the process of certifying their compliance with the new emergency rules in order to offer their product for use in Vermont. In the coming weeks we will provide additional guidance on underwriting RON transactions in a state issued Bulletin.

### **ALTA 18 Tax Parcel Endorsements**

These endorsements, available to both Owner and Loan policies, relate to tax parcel identification. If the Land insured consists only of one tax parcel, the ALTA 18-06 (single tax parcel endorsement ) is the appropriate endorsement. If the land insured is comprised of more than one tax parcel, the 18.1-06 (multiple tax parcel endorsement) is the correct choice. The endorsement insures against loss if the land is taxed as part of a larger parcel or fails to constitute a separate tax parcel. The 18.1 requires completion by the issuing agent, as the issuing agent must identify and list all the tax parcels by APN or tax parcel id.

We require the following verification and review to be completed prior to issuing these endorsements in any transaction:

1. Verify by review of tax records or tax search that the land, consisting of one parcel, is taxed as a separate tax parcel or, if multiple parcels, confirm tax i.d. numbers to reference per parcel in the applicable endorsement.
2. Verify by review of tax records or tax search that the land is not taxed with other land.
3. You do not need to add the tax parcel number to the single tax parcel endorsement but do for the multiple tax parcel endorsement.

Stewart's Virtual Underwriter is a great resource to review the description of these endorsements and provides the issuing guidelines that must be followed. To review the substance of the 18-06 endorsement follow this link: [ALTA Endorsement 18-06 \(Single Tax Parcel\) \(6-17-06\) \(virtualunderwriter.com\)](#). For the issuing guidelines, follow this link: [Guideline: ALTA Endorsement 18.0 and 18-06 \(Single Tax Parcel\) \(virtualunderwriter.com\)](#). To review the substance of the 18.1-06 endorsement, follow this link: [ALTA Endorsement 18.1-06 \(Multiple Tax Parcel\) \(6-17-06\) TC 12-1-16 \(virtualunderwriter.com\)](#). For the issuing guidelines, follow this link: [Guideline: ALTA Endorsement 18.1 and 18.1-06 \(Multiple Tax Parcel\) \(virtualunderwriter.com\)](#).



## **Webinar Today 1PM – 2PM – ALTA Insights: Best Practices to Identify Phishing Email**

Phishing email is one way criminals attempt to garner sensitive information or data. Employees need training and best-practice security controls to keep company data secure. Register for this Closinglock-sponsored ALTA Insights webinar to learn best practices to help identify phishing attempts when reviewing emails. Follow this link to register: <https://portal.altainights.org/events/event-registration/?id=8817db9a-2b07-ef11-a73c-6045bdb469e0&reload=timezone>

As a reminder, ALTA Insights Webinars are complimentary. To obtain login credentials, please contact ALTA.



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