

Dear Stewart Partners,

This midweek update comes one day early due to the holiday this week and we want to remind you that our offices will be closed tomorrow, Wednesday, June 19, 2024, for the Juneteenth National Independence Day holiday.

As we move into summer, we hope you are finding time to enjoy vacations and the lovely weather. In this week's update, we are providing you with a case summary about legal access which was very recently decided in Connecticut along with a review of recent Stewart Bulletins you may have missed. This week's endorsement education follows the access theme and addresses the ALTA 17 series.



Permissive Access Does Not Equal a Right of Access: A Review of Kim Coolbeth v. Connecticut Attorneys Title Insurance Co., et al (Superior Court of Connecticut, Judicial District of Litchfield at Torrington, No. LLI-CV21-6028857-S) by: Katherine F. Fletcher, Esq., Associate Senior Underwriting Counsel & Associate State Counsel

A common source of title claims revolves around access issues, either due to a complete lack of a legal right of access or a mistake in providing additional coverage over access matters. The base ALTA title insurance policies have built-in coverage for a legal right of access in Covered Risk 4, and enhanced coverage policies like the ALTA Homeowner's Policy include additional coverage for vehicular and pedestrian access in Covered Risk 11. Last month, in the case Kim Coolbeth v. Connecticut Attorneys Title Insurance Co., et al (Superior Court of Connecticut, Judicial District of Litchfield at Torrington, No. LLI-CV21-6028857-S), the court found that permissive access does not satisfy a title policy's promise of a "right of access" when the insured has no legal right to enforce or continue access.

In 2012, Kim Coolbeth Jr. ("Plaintiff") purchased an undeveloped lot ("Lot 7") in the town of Kent, CT from a trust, of which his parents were the trustees. At the time of purchase, Plaintiff's parents owned Lot 3 and Lot 5. Lot 3 and Lot 5, along with Lot 7, functioned as the Coolbeth's family compound. Lot 3 is a vacant 8-acre lot that abuts Kent Hollow Road, a public road. Lot 5 has no direct road frontage and is an interior lot south of Lot 3. Lot 5 accesses Kent Hollow Road through a 50-foot easement south of Lot 3. Lot 7 is also an interior lot, south of Lot 5, and does not abut the public road. The family home was located on Lot 5 and a tennis court was located on Lot 7, behind the family home. When Plaintiff purchased Lot 7, he was told Lot 7 had access to Kent Hollow Road via a 20-foot right of way through Lot 6, which is to the west of Lot 7 and abuts Kent Hollow Road. The 20-foot

right of way was shown on a map, but the map had not been recorded during the previous land transfers and therefore no right of way existed when Plaintiff purchased Lot 7. In 2015, Plaintiff's parents sold Lot 5. Plaintiff was no longer able to access Lot 7 by driving up the driveway to Lot 5 and walking to Lot 7 as he had previously done for many years while his parents owned Lot 5.

In 2016, Plaintiff began the permit process to build a home on Lot 7 and, after obtaining a survey, he discovered Lot 7 had no access to the public road. Plaintiff filed a claim with the title insurer that issued his owner's policy when he purchased Lot 7. Specifically, Plaintiff's claim was filed under Covered Risk 4 which indemnifies the insured if, as of the date of the policy, there was "[n]o right of access to and from the Land." The title insurer denied the claim arguing that Plaintiff had enjoyed legal access to Kent Hollow Road by way of permission over Lot 5 and the 50- foot right of way and secondarily by access over Lot 3. The title insurer further argued that legal access for Lot 7 terminated in 2015 when the Plaintiff's parents sold Lot 5, which was a post-policy event and therefore was excluded from coverage.

Plaintiff filed suit against the title insurer seeking a declaratory ruling determining whether there was coverage under the policy and claiming breach of contract against the title insurer. The court found that there was coverage under the policy because permissive access (in this case, based on a familial relationship) does not satisfy the policy's promise of a right of access. The court concluded while Plaintiff's parents may have had access to the public road from Lot 7 based on their ownership or control of Lot 5 and Lot 3, such legal right of access did not transfer to Plaintiff when he bought Lot 7 in 2012.

The court also reviewed the Plaintiff's request to consider his reasonable expectations and to find that the language in the policy means "a legally enforceable vehicular right of access to the public road." The court disagreed stating "The language of the policy obligates the insurance company to provide legal access, even if it is not practicable physical access". The court concluded that, in line with other jurisdictions that have considered this issue, "a lack of right of access provision in the title insurance policy insures only against a lack of legal access and that does not equate to reasonable access."

In a second count, the court also found that the title insurer breached the terms of the title policy by failing to take any action to obtain a right of access or otherwise clear title. With respect to damages, the Plaintiff sought damages for the diminution in value of the property. In assessing the damage claim, the court found he presented no evidence as to that diminution of value based on no right of access and awarded the Plaintiff nominal damages in the amount of \$1. Although this is a lower court decision, it provides a useful analysis of access coverage under a policy of title insurance. To read this decision, follow this link: [Kim Coolbeth v. Connecticut Attorneys Title Insurance Co.](#)

ALTA 17 series - Access Endorsements

As mentioned above, built-in policy coverage for a legal right of access is found in Covered Risk 4, and in Covered Risk 11 in enhanced coverage policies like the ALTA Homeowner's Policy. Your clients may also request endorsements from the ALTA 17 series which offer increased coverage for access rights.

The ALTA 17 can be added to the Owner's or Loan Policy and provides expanded access coverage for properties with direct access to a public road. For properties with indirect

access to a public road via an easement, the ALTA 17.1 endorsement can be added to the Owner's or Loan Policy. In order to issue the ALTA 17.1, title to the easement providing access to a public road must be searched, and any limitations on the scope and/or use of the easement must be noted. Specific exceptions of recorded matters affecting the easement property should be added to Schedule B, Part 1 of the policy. Also note the ALTA 17.1 can only be issued if the land has existing improvements in use. With respect to commercial policies, we often also see requests for the ALTA 17.2 endorsement. This endorsement insures against loss if there is a lack of a right of access to specific utilities or services over, under or upon rights-of-way.

For the endorsements as well as the general underwriting guidelines pertaining to each endorsement in the ALTA 17 series please review the information provided in Stewart's Virtual Underwriter. The link to the form of the endorsement and its associated guideline is provided below. If you have any questions about any of the endorsements, including pricing and state specific issuing guidelines, please reach out to your Stewart underwriter for more information.

[ALTA Endorsement 17-06](#)

[Guideline: ALTA Endorsement 17-06](#)

[ALTA Endorsement 17.1-06](#)

[Guideline: ALTA Endorsement 17.1-06](#)

[ALTA Endorsement 17.2-06](#)

[Guideline: ALTA Endorsement 17.2-06](#)



In Case You Missed It

If you didn't happen to catch the several bulletins issued by Stewart's Legal Services involving several distinct, but important topics, including closing instructions, OFAC searches and MV Realty PBC, LLC, we've provided a brief summary and links to the full bulletins below.

Bulletin - SLS2024009 - UNDERWRITING - Lender's Closing Instructions Requirement to Delete the Creditors' Rights Exclusion [Revised 6-11-24]

Stewart recently published an underwriting bulletin about a review of a lender's closing instructions which revealed a parenthetical statement requiring the deletion of creditor's rights from the policy jacket. Per the bulletin, **under no circumstances is the creditors' rights exclusion to be deleted from any policy**. Also, if you have identified this type of language in a lender's instructions, specific language should be added to Schedule B of your title policies.

Please see the full bulletin for details: [Bulletin SLS2024009 \(virtualunderwriter.com\)](#)

Bulletin SLS2024010-Foreign Sanctions Evaders List - Temporary Search Workaround

Another recent Stewart bulletin advises that the search feature available in Virtual Underwriter (VU) for searching the Foreign Sanctions Evaders List (the FSE List) is being updated. A search for names on the United States Treasury Department's Office of Foreign Assets Control (OFAC) FSE List using the Stewart Special Alerts Search Application will not produce accurate results.

Click [here](#) to be directed to OFAC's Sanctions List Search application. This website will also search the Specially Designated Nationals and Blocked Persons List (the SDN List).

Please note that the search feature in VU for the SDN List and Stewart Special Alerts is still otherwise functioning normally. You may continue to use the VU search application for searches of the SDN List and Stewart Special Alerts.

Effective immediately, and until otherwise advised, please use the Sanctions List Search application at OFAC's website to search the FSE List.

Please see the full bulletin for details: [Bulletin: SLS2024010](#)

Bulletin- SLS2024011- MV Realty PBC, LLC and Affiliates – Update

Lastly, the MV Realty PBC, LLC (MV) bankruptcy case, and all jointly administered MV Realty affiliate bankruptcy cases, were voluntarily dismissed without prejudice on May 24, 2024. MV Realty PBC, LLC has its "Homeowner Benefit Program" in which MV Realty provides an up-front cash payment to a homeowner in return for a future exclusive right to act as the listing agent when the owner sells their home. As part of their program, MV records a Memorandum of Agreement or Notice of Agreement on the land records. Stewart requires that a release of the Memorandum, or the Agreement signed by both the homeowner and the MV Realty entity or other real estate company named in the agreement must be recorded.

Please see the full bulletin for details: [Bulletin: SLS2024011](#)

If you have any questions relating to these bulletins, please contact a Stewart Underwriter.



Please be advised that Stewart's Offices will be closed in observance of the Juneteenth Holiday.



[Meet Our Team | Stewart Connecticut](#)

[Meet Our Team | Stewart Maine](#)

[Meet Our Team | Stewart Massachusetts](#)

[Meet Our Team | Stewart New Hampshire](#)

[Meet Our Team | Stewart Rhode Island](#)

[Meet Our Team | Stewart Vermont](#)



1-800-STEWART

www.stewart.com

© 2024 Stewart. All rights reserved.

This email was sent to your address because your email preferences are set to receive our updates.

[unsubscribe](#)