



Dear Stewart Partners,

We hope you enjoyed the gorgeous, dare we say perfect, weather this past weekend. In this week's Mid-Week Update, we will kick off the first in a series of highlighting common commercial endorsements. The featured endorsements to start us off are the zoning endorsements that make up the ALTA 3-series. In addition, David Piechota, one of our Connecticut underwriters, addresses two topics of interest for practitioners in Connecticut concerning mortgage broker licensing and transfer taxes imposed in certain corporate transfers.

Lastly, we want to highlight one of the many ways that Stewart gives back to the community. Recently Stewart announced the Spring Community Award Recipients and several local organizations received awards. Over the years, Stewart has given back to local charities and organizations that are important to its employees. To see the list of recent and past recipients, check out our last topic in this week's Mid-Week.



ALTA 3 series-Zoning Endorsements by: Michelle Radie-Coffin,
Esq., NH State Manager and Associate Senior Underwriting Counsel

The effect of government regulations, such as building and zoning ordinances, are specifically excluded from coverage under the standard Owner and Loan policies pursuant to Paragraph 1(a) of the Exclusions From Coverage section. The ALTA 3-series of endorsements provides assurance that the land described in the policy is zoned in a specific classification and lists one or more of the uses allowed in that classification. The ALTA 3-series includes five endorsements and each one has its own guideline for issuance. All the endorsements in the ALTA 3-series are available for both owners and loan policies and all contain specific underwriting requirements that must be met before issuance.

The ALTA 3 is used for vacant land. The ALTA 3.1 is used only for land with completed structures. The ALTA 3.2 is intended for use in an ongoing or contemplated construction project in which improvements have not yet been completed, but for which the title insurer has been provided existing plans and specifications which depict the contemplated improvements. The ALTA 3.3 is designed for issuance on land improved with an existing building where there is known non-conforming use and finally, the ALTA 3.4 is used when the land is improved with an existing building or structure where there is no zoning classification.

For the endorsements as well as the general underwriting guidelines pertaining to each endorsement in the ALTA 3-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 3 Endorsement](#)

[ALTA 3 Guidelines](#)

[ALTA 3.1 Endorsement](#)

[ALTA 3.1 Guidelines](#)

[ALTA 3.2 Endorsement](#)

[ALTA 3.2 Guidelines](#)

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[ALTA 3.4 Guidelines](#)



Are You Safe from the S.A.F.E. Act? A CT Perspective. by: David Piechota, Esq., Underwriting Counsel - Connecticut

The "Secure and Fair Enforcement of Mortgage Licensing Act of 2008", or as it has come to be known, the "S.A.F.E. Act" was enacted by Congress on July 30, 2008. Its primary aim was to protect borrowers from unscrupulous and unqualified mortgage originators by setting up barriers to entry into the mortgage origination and lending industry and by establishing an element of "quality control" over those who work within it. As it turns out, however, the S.A.F.E. Act is not all that safe for everyone, especially for attorneys advising individuals making loans.

The S.A.F.E. Act gave birth to a national licensing and registration system for mortgage loan originators called the "Nationwide Mortgage Licensing System & Registry", or "NMLS" (<http://mortgage.nationwidelicencingsystem.org>). The purpose of this registry is to provide regulators, employers and borrowers with a simple means of tracking and investigating the employment and disciplinary histories of mortgage originators. In addition, the Act required each state to pass a S.A.F.E.-compliant statute for the licensing of mortgage lenders, brokers and originators prior to their registration on the NMLS.

Connecticut's version of the S.A.F.E Act is codified as C.G.S. §36a-1, et seq. It defines a "mortgage loan originator" as "...an individual who for compensation or gain or with the expectation of compensation or gain (A) takes a residential mortgage loan application or (B) offers or negotiates the terms of a residential mortgage loan." Any person qualifying under

the definition must obtain a license from the Connecticut Department of Banking subject to the following requirements:

1. check for revocation of a prior license
2. criminal background check
3. demonstration of financial responsibility and character
4. completion of at least twenty (20) hours of pre-licensing education
5. written test score of at least 75 (out of 100)
6. posting of surety bond coverage (through broker)
7. furnishing of fingerprints to the NMLS for submission to the FBI
8. furnishing of credit report authorization to NMLS.

Specifically excluded from the licensing requirement are (1) individuals offering or negotiating the terms of a residential mortgage loan with or on behalf of an "immediate family member" (i.e. spouse, child, sibling, parent, grandparent, grandchild, stepparents, stepchildren, stepsiblings and adoptive relationships), (2) individuals offering or negotiating the terms of a residential mortgage loan secured by a one-to-four family home that served as the individual's residence and (3) a licensed attorney negotiating the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client.

A "mortgage lender" is defined as "a person engaged in the business of making residential mortgage loans in such person's own name utilizing such person's own funds or by funding through a warehouse agreement, table funding agreement or similar agreement."

Specifically excluded are persons (a) making five or fewer loans within any twelve month period, (b) who own real property and take back from the buyer of that property a "secondary mortgage loan" (i.e. loan secured by subordinate mortgage) and (c) making "secondary mortgage loans" to individuals related to the maker by blood or marriage. As with "mortgage loan originators", the statutes detail specific prerequisites for licensing of mortgage lenders, including a minimum tangible net worth of \$250,000.00 and the posting of key personnel in each physical location who have satisfied pre-licensing educational and testing requirements.

A close examination of the definitions of "mortgage loan originator" and "mortgage lender" reveals that entangled within the broad nets cast by the Act are certain "seller financing" and private loans which previously slipped through state and federal regulations. Specifically, while the Act provides an exemption for seller financing on property which "served as the individual's residence", there is no exemption for seller financing on investment properties which did not serve as the seller's residence. Similarly, the exemption for loans made to "immediate family members" would not include a loan made to a best friend or other unrelated party. Accordingly, any such loans would require, as a pre-requisite to their origination, that the maker first obtain a license. The penalty for failing to do so is a civil fine of up to \$100,000.00 for each and every loan originated without the requisite license.

The question that arises is if there is a way around obtaining a license if someone wants to offer a loan to your best friend without a Mortgage Loan Originator license. Unfortunately, the best answer to the question is "yes", "no" or "maybe", depending upon the specific scenario. Any party seeking to make a loan who does not have the appropriate license

should always consult with an attorney so that the lender complies with applicable state and federal statutes.



Connecticut's Controlling Interest Transfer Tax by: David Piechota, Esq., Underwriting Counsel - Connecticut

The Connecticut controlling interest transfer tax is a **tax on real estate transferred through the sale or transfer of a business entity that owns an interest in Connecticut real property.** It was created to prevent the circumvention of the Conveyance Tax. **The tax rate is 1.11% of the present true and actual value of the property.** The tax applies when a controlling interest in the entity is transferred, which means more than 50% of the voting stock of a corporation or more than 50% of the capital, profits, or beneficial interest in a partnership, association, trust, or other entity.

Statutory Authority: Conn. Gen. Stat. §12-638b, as amended by 2003 Conn. Pub. Acts 1, §100 (June 30 Spec. Sess.).

Controlling interest means, in the case of a corporation, more than 50% of the total combined voting power of all classes of stock in the corporation, or in the case of a noncorporate entity (such as a partnership, limited liability company, or trust), more than 50% of the capital, profits, or beneficial interest in the noncorporate entity.

Real property means any interest, legal or equitable, present or future, vested or contingent, in real property, which interest endures for a period of time, the termination of which is not fixed or ascertained by a specific number of years, such as an estate in fee simple or a life estate, provided a conveyance of such interest would be considered a conveyance of real property for purposes of the real estate conveyance taxes imposed under Chapter 223 of the Connecticut General Statutes.

Present true and actual value of real property is its fair market value, unreduced by the amount of any mortgage, lien or other encumbrance, as of the time of the transfer of a controlling interest.

A controlling interest transfer tax is imposed on the transfer for consideration of a controlling interest in an entity, whether it be a corporation, partnership, association, trust, limited liability company or other organization, where the entity owns, directly or indirectly, an interest in Connecticut real property.

The transferor or transferors—not the transferee or transferees—are subject to the tax. Where a group of persons acting in concert transfers a controlling interest in an entity, these transferors are jointly and severally liable for the tax. A group of persons are deemed to be acting in concert if there is a unity with which the transferors have negotiated and will consummate the transfers or if the transferors are so related that one influences or controls the action of another (such as affiliated corporations). Factors that may indicate a unity with which transferors have negotiated and will consummate the transfers include transfers closely related in time; few transferors; contracts to transfer containing mutual terms, or agreements among transferors, binding themselves to a course of action with respect to the transfers.

Form AU-330, Controlling Interest Transfer Taxes, must be filed by the transferor on or before the last day of the month following the month during which a controlling interest in an entity was transferred. Where the transfer is made in a series of transactions, **Form AU-330** must be filed on or before the last day of the month following the month during which the interest sold or transferred, in the aggregate, first exceeds 50%. Where a group of transferors acting in concert transfers a controlling interest, one **Form AU-330**, signed by each member of the group, is to be filed.

Form AU-331, Controlling Interest Transfer Taxes Informational Return, must be filed by the entity in which a controlling interest was transferred on or before the last day of the month following the month during which the controlling interest was transferred. The entity is also required to maintain records pertaining to any transfer.

Although the transferor is obligated to file the relevant tax forms and pay the required tax, no release is recorded on the land records. There is a risk that the property could become subject to a lien if the Commissioner of Revenue Services seeks collection. If you are asked to insure the title to property where only underlying member or owner interests are being conveyed, but there will be no deed recorded, contact your local underwriting counsel for guidance.

Further information and forms may be found at the following link: <https://portal.ct.gov/drs/publications/special-notices/2003/sn-2003-11>



**Stewart Cares for Our Community - CONGRATULATIONS! 2024
Spring Community Service Award Winners!**

Stewart has a history of supporting non-profit organizations ranging in size from large, international organizations to small, local organizations. Stewart regularly donates to local charities that are nominated by its employees, through its Community Service Award program. This spring, 480 non-profit organizations will be receiving a donation from The Stewart Title Foundation, including A Simple Gesture-Norwell which is based out of Norwell, Massachusetts. Additionally, the Angel Fund – MA, which is dedicated to ALS research also was a recipient of an award this spring.

Over the years, the following other non-profits have also received a Community Service Award from Stewart based on a nomination by one of Stewart's New England employees.

The Howard Center (Vermont)

Womenade of Concord (New Hampshire)

Rigby Free Soccer Club (Maine)

Westfield Athenaeum (Massachusetts)

Women's Lunch Place (Massachusetts)

Mission of Deeds (Massachusetts)

My Brother's Table (Massachusetts)

Mutt Rescue (Massachusetts)

Amy's Angels (Connecticut)

Ball & Sockets Arts (Connecticut)

To see the full list of this year's winners and past recipients – follow this link: [Community Service Awards](#) | [Stewart](#)



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