

Dear Stewart Partners,

Summer is fully in swing and the weather in most of New England has been great. We hope you can get out and enjoy it before the leaves begin to fall. In this week's Midweek Update, we announce a leadership change in Stewart's agency division, address legal issues involved in transferring title from probate estates in Massachusetts, continue with our endorsement series by covering the ALTA 9 private rights commercial endorsements, and provide a reminder that registration is open for NELTA's (the New England Land Title Association) annual convention being held in Portland, Maine.

Lastly, in case you missed it, Bulletin SLS2024010 has been revised relative to searching Stewart's Special Alert database.



Iain Bryant named Group President – Agency Services

Stewart Information Services Corporation (NYSE: STC), Stewart Title Guaranty Company's parent company, recently announced the promotion of Iain Bryant to Group President – Agency Services. Iain joined Stewart in 2021 when Stewart acquired A.S.K. Services, a leading national title examination and industry service provider, where he was Principal and Co-Owner. Since 2022, he has served as Stewart's Central States Agency District Manager overseeing the products and services provided to Stewart's independent agent partners in 17 states. According to Stewart's CEO, Fred Eppinger, "I am excited to have Iain as a member of our Executive Leadership Team. Over the last several years, he has been a critical part of the Agency Leadership team and has had an integral role in establishing and executing our Agency strategic plans. Iain is a proven leader with a strong customer focus and will continue to deliver valuable support to our independent Agent customers." Stewart's New England Agency team is excited to have Iain at the helm of our agency operations as we continue our mission to become the industry's premier title services company. Our agents' local Stewart Agency Group contacts remain unchanged.



Taking Title from Estates in Massachusetts—A brief summary By:
Mark Jones, Esq., Associate Senior Underwriting Counsel for
Massachusetts and Rhode Island

A common question that comes up in underwriting title insurance is how do we take title from the estate of a deceased person? There are typically three main ways that we can accept a title from an estate: (1) by License to Sell issued by the Probate Court; (2) by Power of Sale under an allowed Will; or (3) by a deed from the heirs at law or devisees in a Will. It is important to remember, however, that depending on which method is used to pass title, other claims or liens which impact title may need to be addressed in order for a policy to issue without exception.

Decree of Sale of Real Estate by Personal Representative (License to Sell)

There are a couple variations in the types of Licenses to Sell, but the end result for each is that the estate sells free and clear of any liens that would otherwise attach to the estate. Instead, those liens would attach to the proceeds of the sale. These liens include the automatic lien for administrative expenses, any creditor's claims filed in the probate court (creditors have one year after death to assert claims), and any MassHealth liens filed with the probate court. Keep in mind, any liens that encumbered the real estate prior to death, such as a mortgage, still require a discharge. Also, a license does not eliminate the need to deal with Federal and Massachusetts Estate Taxes. Releases of estate taxes from both the IRS and DOR or an appropriate affidavit must be obtained and recorded at the Registry of Deeds.

The typical license we see is a general license to sell by the Personal Representative ("PR") in the estate. A PR would file with the court a Petition for the Sale of Real Estate in order to receive permission to sell. This is a license under G.L. c. 202, section 19 and the court will only allow the petition if it is filed within one year of the allowance of the PR's bond. The license must be used within one year of issuance. The terms of the license must be scrupulously followed. Most importantly, the sale price must be for the same amount or more than set forth in the license. My personal preference, and the best practice, is to have the license recorded along with the deed to make life easier on future title examiners but it is sufficient that the decree is only docketed in the probate case.

Power of Sale in a Will

Taking a deed under Power of Sale in a Will is similar to a deed under a License to Sell in that any liens against the estate would attach to the proceeds of the sale. Again, releases of estate tax liens or estate tax affidavits must be recorded at the Registry of Deeds. In order to take a deed from a PR, the Will must contain a Power of Sale, the Will must be allowed by the court, and the PR must be appointed by the court. The Power of Sale must be closely reviewed to confirm that the power to sell includes real estate and that there are no other conditions tied to the PR's power to sell. A PR is a fiduciary and therefore is bound by both statutory and common law fiduciary duties. For this reason, a deed from a PR that is for nominal consideration is problematic and may not be insurable. It is important to remember that a PR's ability to sell under Power of Sale in a Will is not limited to time and not only cuts off claims of creditors but also all claims of legatees and devisees. The PR's powers, however, are not indefinite. Specifically, if an Order of Complete Settlement is issued or the PR files a closing statement, the Personal Representative no longer has the ability to sell the real estate.

Deed from Devisees in a Will or Heirs at Law

Unlike deeds under Licenses to Sell and Power of Sale in a Will, any claims or liens filed in the probate court against the estate will have to be released or satisfied before we can insure a title given by devisees in a Will or heirs at law. One of the first and critical steps in determining whether title can be insured by such a deed, is establishing the identity of the devisees or heirs at law. Prior to the adoption of the MUPC, it wasn't always easy to identify the devisees of a decedent if the will broadly identified individuals by group, rather than by name; however, with the adoption of the MUPC, the forms that are filed as part of a petition provide detailed information on devisees. In situations where a decedent died testate, and the devisees are clearly established in the probate filing, the devisees can convey the real estate; however, that conveyance is subject to divestment by the PR if the PR seeks to sell the property in order to completely administer the estate. Property conveyed by devisees is also subject to claims for the administration of the estate for a period of six years after the approval of the PR's bond. To insure the title, we would generally require that the probate be closed with an order of complete settlement. This eliminates the potential for divesture by a PR and eliminates the potential for claims arising out of the administration of the estate.

If the decedent died intestate, unless the probate petition is filed as a formal proceeding, there is no determination of heirs and one cannot immediately rely on the filed forms to establish the heirs at law from a title perspective. For this reason, deeds from heirs in an informal proceeding may not be immediately insurable. If an informal probate has been filed for a decedent that died intestate and a PR has been appointed, it will generally be necessary for the PR to file a petition for an order of complete settlement that includes a specific request to determine the heirs. Once allowed, title conveyed from the heirs will be insurable.

As you can see, taking title from devisees or heirs at law can be far more complicated than taking title from a PR who has obtained a license or has been permitted to sell by the terms of the Will. Should you have questions on how to transfer title so that it is insurable when there is a probate involved, don't hesitate to reach out to any member of our underwriting team. We will work with you to determine the best and easiest path to insurability.

The probate court provides links to many of the probate related forms, along with instructions for completion. To view, follow this link: <https://www.mass.gov/lists/probate-and-family-court-forms-for-wills-estates-and-trusts>



ALTA 9 series Private Rights Endorsements, 9.6, 9.6.1 and 9.9 By:
Mark Jones, Esq., Associate Senior Underwriting Counsel for
Massachusetts and Rhode Island

The ALTA 9 Series of endorsements offers a variety of coverages related to violations of covenants, restrictions, encroachments and divestment of mortgage liens. Generally, we often hear the ALTA 9 referred to as a "Comprehensive Endorsement" because originally it was created to address coverages that are often required by lenders. ALTA ultimately revised the ALTA 9 into several separate sections to define coverage more clearly. Today, we will review the ALTA 9.6, ALTA 9.6.1 and ALTA 9.9.

[ALTA 9.6-06 Private Rights – Loan Policy](#)

[Issuing Guidelines](#)

This endorsement is designed for use with loan policies. This endorsement insures against loss or damage sustained by the Insured under the Loan Policy if enforcement of a Private Right in a Covenant, recorded in the public records, affecting the Title at Date of Policy (a) results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage, or (b) causes a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness. A "Private Right" means (i) a private charge or assessment; (ii) an option to purchase; (iii) a right of first refusal; or (iv) a right of prior approval of a future purchaser or occupant.

When determining whether you are able to issue the endorsement with a loan policy, it is necessary to review all recorded documents to determine whether they contain private rights, and then assess whether by the terms of the document, the right will automatically be subordinated to the mortgage being insured. If the private right could invalidate the mortgage or take priority over the mortgage, it will be necessary to carve out coverage for that right under paragraph 4 (d) of the endorsement.

When reviewing the documents in the chain that impact the subject property, it is important to review the entirety of the document, because a private right may not be immediately identifiable from the title of the document.

[ALTA 9.6.1 Private Rights – Current Assessments](#)

[Issuing Guidelines](#)

Like the 9.6, this endorsement is designed for issuance with loan policies. This endorsement is similar to the 9.6 except the language in bold has been added: This endorsement insures against loss or damage sustained by the Insured under the Loan Policy if enforcement of a Private Right in a Covenant, recorded in the public records, affecting the Title at Date of Policy (a) results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage, or (b) causes a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness. A "Private Right" means (i) a private charge or assessment due and payable at Date of Policy; (ii) an option to purchase; (iii) a right of first refusal; or (iv) a right of prior approval of a future purchaser or occupant.

Choosing this endorsement would be appropriate when a private right establishes the property owner's obligation to pay assessments or charges, which charges, if not paid in the future, could take priority over the mortgage. An example of this might be condominium charges. Depending on the jurisdiction, condo fees can take priority over the mortgage. If insuring a mortgage where such future fees could impact the priority of the mortgage this endorsement would be the appropriate choice.

[ALTA 9.9 Private Rights—Owner's Policy](#)

[Issuing Guidelines](#)

The two endorsements above were designed for issuance with a loan policy, while the 9.9 is designed for use with an owner's policy. This endorsement insures against loss or damage

sustained by the Insured under the Owner's Policy if enforcement of a Private Right in a Covenant, recorded in the public records, affecting the Title at Date of Policy based on a transfer of Title on or before Date of Policy causes a loss of the Insured's Title. In the Owner's version, "Private Right" means (i) an option to purchase; (ii) a right of first refusal; or (iii) a right of prior approval of a future purchaser or occupant. Note that private charges or assessments have been omitted.

Like the two endorsements discussed above, it is important to critically read any covenant, agreement, or other document that impacts the title and review closely to see if there is any right of first refusal, option to purchase, or approval rights contained therein. These types of rights can be referred to in a deed as well and may not be recorded as an independent document.

All three of the above endorsements (9.6, 9.6.1, and 9.9) do not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:

1. any Covenant contained in an instrument creating a lease;
2. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land;
3. any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances; or
4. any Private Right in an instrument identified in Exception(s) _^{***}_____ in Schedule B.

^{***}For item d. if there is a Private Right that will impact the subject mortgage or owner, it would need to be identified. If no documents in the chain of title create a private right as defined by the endorsement, it is appropriate to insert the word: "none"



Reminder to Register for NELTA's Annual Convention

New England Land Title Association (NELTA) is holding its annual convention September 15-17, 2024 at the Westin Portland Harborview Hotel in Portland, Maine. Attendees will be able to earn CLE credits, network with industry peers, participate in a roundtable discussion focused on commercial real estate transactions, and learn about various topics including new legislation affecting the title industry. The link to register is as follows: [NELTA Registration](#)



In Case you Missed It

Bulletin SLS2024010, originally issued on June 6, 2024, alerted our partners that the Stewart Special Alerts database was temporarily not able to search the Foreign Sanctions Evaders List (FSE). The temporary search workaround described in the Bulletin is no longer applicable and the search application provided by Stewart's Virtual Underwriter is

now functioning normally. You may resume searching the FSE List as well as the Specially Designated Nationals List (SDN List) and Stewart Special Alerts using the search application available on VU. For reference, here is the direct link: [Special Alerts Stewart](#)

To read the full Bulletin, follow this link: [Bulletin: SLS2024010](#)



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