

Dear Stewart Partners,

Summer is quickly heading into its last month. Schools and colleges will be in full swing in the next few weeks. We hope you can get out and enjoy the remainder of the summer before fall begins. In this week's Midweek Update, we address legal issues involved in clearing title for reverse and partial claims mortgages. Additionally, we want to highlight concerns and potential harm surrounding the use of Attorney Opinion Letters ("AOLs"). Also provided is another 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



Understanding the necessity of obtaining releases for Home Equity Conversion Mortgage (HECM) Loans and HUD's Second mortgages along with Partial Claims Mortgages.—A brief summary By: David M. Piechota, Esq., Underwriting Counsel for Connecticut

The Home Equity Conversion Mortgage (HECM) loan program is a pivotal component of the U.S. Department of Housing and Urban Development's (HUD) efforts to support seniors in their financial planning. A HECM loan, commonly known as a reverse mortgage, allows older homeowners to convert part of their home equity into loan proceeds, which can be utilized for various purposes, including covering living expenses or making home improvements. Understanding how HECM loans work, and the implications of HUD's secondary mortgage, is crucial for homeowners and their title.

The HUD second mortgage is important for several reasons:

- **Security for HUD:** The second mortgage ensures that HUD has a secured interest in the property. If the primary lender's loan is not fully satisfied, the second mortgage provides additional security and guarantees that HUD's insurance fund will not be depleted. When paying off a HECM, it generally won't be necessary to obtain a specific payoff for the second mortgage to HUD, which is distinct from Partial Claim Mortgages discussed below.
- **Title Implications:** Because the HUD second mortgage is a separate and additional lien on the property, the title remains unmarketable until this second mortgage is formally released. Even if the first mortgage (held by the primary lender) is paid off, the second mortgage must be released for the property to be considered clear of all encumbrances.

Standalone Partial Claim Mortgages: These mortgages generally arise through programs offered to distressed homeowners as a means to avoid foreclosure. The programs allow a borrower to take the mortgage payment arrearages (the past due amounts) out of the mortgage debt to the first lien holder and place those amounts into a zero-interest subordinate lien/mortgage against the property. This amount is advanced by HUD on behalf of the borrower to the first lien holder, so the first lien holder is paid what it is owed and the mortgage is no longer past due. This is sometimes also combined with a modification of the first mortgage's interest rate or term. The amount paid on behalf of the borrower by HUD is secured by the Partial Claim Mortgage to HUD. The Partial Claim amount does not require payment until the last mortgage payment is made, the loan is refinanced, or the property is sold, whichever occurs first.

HUD does not forgive or settle partial claims and they must be paid in full. The Borrower makes monthly payments of principal and interest on the first loan, but the second loan or Partial Claim Mortgage does not require monthly payments and does not carry interest. Although these mortgages are generally part of a modification offered by the first lender, the Partial Claim mortgage is not tied to the payoff provided by the first lender, and requires a distinct and separate payoff statement from HUD's loan servicing agent. This can surprise a homeowner, as sometimes the homeowner doesn't remember or isn't aware that their property is encumbered by a second lien, given that no monthly payments are being made. Again, even if the first mortgage (held by the primary lender) is paid off, the Partial Claim Mortgage must be paid and released to clear title.

When closing a transaction involving a Partial Claim Mortgage it is critical to obtain the separate payoff statement from the HUD vendor and confirm that HUD has released its mortgage. The release will be required in order to clear title.

An agent or homeowner may seek assistance in obtaining the necessary release of the non-HECM HUD mortgage by contacting through its national program servicer: https://www.hud.gov/program_offices/housing/sfh/nsc/

Payoff Requests: PCPayoffs@hud.gov

Release Requests: PCReleases@hud.gov

To view the Stewart Bulletin on this topic, follow this link: [Bulletin: SLS2023020](#)



Attorney Opinion Letters (“AOLs”) By: Michelle Radie-Coffin, Esq.,
New Hampshire State Underwriting Counsel and State Manager

The Federal Housing Finance Agency's (FHFA) pilot program aimed at removing title insurance requirements for certain qualifying loans has made industry news with consistent frequency in the past year. Fannie Mae and Freddie Mac have both announced their willingness to accept attorney opinion letters (“AOLs”) in lieu of title insurance, provided certain conditions are met. This wave of change was precipitated by the federal government's concern for high closing costs and potential barriers to home ownership.

It is important to understand the difference between title insurance and AOLs as well as to be aware of the risks and limitations placed on an agent who chooses to use this alternative product. Stewart Title Guaranty Company (STGC) recently issued a bulletin (linked below) highlighting that it does not participate in the AOL program and that if an agent chooses to use the AOL product, no CPL and no commitment/policy may be issued. In addition, reference to STGC on any closing documents must be removed.

According to a recent article in Forbes, “An attorney opinion letter is a legal document that outlines an attorney’s professional opinion on a particular matter such as the legality of a real estate transaction. Attorneys are only responsible for their negligence, however, and an attorney opinion letter is not an insurance policy that would cover hidden defects and mistakes in the public records, which may lead to potential fiscal cures.” When comparing an AOL with a standard owner’s title policy the only overlap in coverage is matters found in the search. Unlike the standard owner’s title insurance policy, the AOL does not cover the following:

- Hidden title defects (matters not found in a public records search)
- Forged documents
- Missing heirs
- Mis-indexed documents
- Recording mistakes
- Unrecorded liens
- Incapacity, incompetency, or lack of authority of grantors
- Matters occurring after the date of the title search.

The New Hampshire Attorney General, along with 13 other attorneys general, recently sent a letter to the FHFA expressing concerns over this pilot program. In the letter, linked below, it is noted, “Title insurance is a one-time upfront cost that generally constitutes less than half a percent of the purchase price and protects homeowners from catastrophic financial harm.” The letter cautions that the FHFA’s program could further harm consumers by opening them up to potential fraud and abuse because, unlike title insurance, AOLs do not protect against title defects such as alternative claims of ownership.

Before contemplating issuing or accepting an AOL, we urge you to become familiar with the requirements of issuing an AOL by reviewing the Selling

Guides issued by both Fannie Mae and Freddie Mac and to adhere to the responsibilities outlined in the previously mentioned Bulletin linked below.

<https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2024/pr24-58-letter.pdf>

<https://www.virtualunderwriter.com/en/bulletins/2024-8/sls2024013.html>



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 Link](#)



In Case you Missed It

Bulletin SLS2024010, originally issued on June 6, 2024, alerted our partners that the Stewart Special Alert 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 VU 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 in VU. For reference, here is the direct link to search the database:

<https://specialalerts.stewart.com/Search>



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