

Dear Stewart Partners,

The summer is certainly flying by – it’s hard to believe we’re already in August. We hope you all have been able to take some time off or will be taking some time off to enjoy the summer before it’s over. In this week’s Mid-Week Update, we are providing you with information on the proposed revisions to ALTA’s Best Practices. In addition, this week’s endorsement education covers the ALTA 9.1, 9.2, 9.3 and 9.8 Covenants, Conditions and Restrictions Endorsements. We also want to remind you of an upcoming webinar happening on August 21, 2024 for our MA agents. Stewart’s New England Regional Underwriting Counsel and Senior Vice President, Jutta Deeney, Esq. will be discussing Affordable Housing Covenants so we hope you will be able to listen in. Lastly, in case you missed it, we are providing a link to a recent CT Legislative Update Bulletin.



ALTA Best Practices 4.1 Proposed Revisions By: Rhonda L. Duddy, Esq., MA and NH Underwriting Counsel

For those who may not be familiar with them, the ALTA Best Practices consists of seven main categories known as pillars that settlement agents are urged to follow. ALTA had updated their Best Practices back in May of 2023 to version 4.0. Changes to Pillars 3 and 4 as well as some additional resources are now proposed in the recent revision 4.1 to Best Practices.

ALTA Best Practice 4.0 Pillar 3 requires the settlement agent to adopt and maintain a written information security plan (WISP) and a written privacy plan to protect non-public personal information (NPI) as required by local, state, and federal law. The proposed revision is made to align Pillar 3 with the National Institute of Standards and Technology (NIST) password reset guidelines. NIST revised their recommendations on changing user passwords to require a change if there is evidence of compromise. The current Best Practices 4.0 does not reflect a forced password change if there is evidence of a password compromise. As a result, in addition to referencing “passwords that expire after a certain period of time”, the proposed revision to Pillar 3 would now include the addition of “or upon a triggering event”, which is reflected in the NIST guidelines.

ALTA Best Practices 4.0 Pillar 4 references the recommended due diligence for closing transactions not involving state regulated title insurance policies. Pillar 4 requires the settlement agent to assess additional risks by adopting standard real estate settlement policies and procedures that help ensure compliance with (i) federal and state consumer financial protection laws and regulations, and (ii) contractual obligations as applicable to the

settlement process. Currently, there is no language in Best Practices 4.0 to address assessment and analysis of the potential risks when performing closing transactions that do not involve state regulated title insurance policies. To remedy this, the following addition has been proposed:

- “Perform due diligence and analyze risk profile when providing functions that fall outside of the Title Agency’s relationship with the Title Insurer and when not issuing a title insurance policy for the transaction. These functions may include (1) collection and/or disbursement of premiums, escrows, security deposits or other funds, (2) handling escrow or Settlement, and/or (3) recording documents. If engaging in these functions Company should:
- Review its state licensing requirements to determine if it is legally allowed to engage in the function. Some states have additional licensing requirements to hold funds in escrow. Other states only authorize a company to conduct a settlement when the company is issuing a title insurance policy.
- Review closing instructions with company management to confirm that management approves any risk assumption, liability and other matters identified in the closing instructions.
- Review state laws, including case law, to understand the duties and responsibilities that may be imposed by law when engaging in these functions.
- Evaluate whether, in the event of a loss or claim, the company will continue to be solvent. Such evaluation may include determining whether a loss or claim may be covered by the company’s professional liability insurance including E&O and cybersecurity insurance.”

The ALTA Best Practices 4.1 proposed revisions also include additional resources to be published in the third quarter of 2024, which would provide guidance on issues already addressed with Best Practices. This includes a Pillar 3 WISP Guidance Document which will provide specific guidance on the importance and process of creating a WISP for a settlement agent’s operations.

Lastly, FAQ Guidance on “undue risks” has been included in this revision since there has been industry discussion on issues of deposit timing referenced within the current Pillar 2 which explains that disbursements from Escrow Trust Accounts should not be taken for funds that are not fully settled or reversible; the FAQ will discuss this issue in further detail.

The ALTA Best Practices proposed changes are currently in a public comment period until August 12, 2024. Comments can be emailed to bestpractices@alta.org. For more information, please refer to the ALTA Best Practice link below:

[ALTA - Proposed Revisions to ALTA's Best Practices in Public Comment Period](#)



ALTA 9.1, 9.2, 9.3 and 9.8 – Covenants, Conditions, and Restrictions Endorsements By: Tracie Kester, Esq., Associate Senior Underwriting Counsel

In this week's edition of commonly requested endorsements, we are focusing on the ALTA 9 Covenants, Conditions, and Restrictions ("CCR") endorsements, and there are four of them. Unlike the Restrictions, Encroachments, and Minerals endorsements discussed in last week's update, these CCR endorsements provide limited coverage for encroachments, and so it may be easier to provide one of these endorsements in a transaction where the parties do not have an ALTA survey but want some ALTA 9 coverage.

The CCR endorsements do provide coverage for covenant violations, but the coverages vary slightly. There is one CCR endorsement for the loan policy, the ALTA 9.3 ("[Covenants, Conditions, and Restrictions – Loan Policy](#)"), which provides coverage for loss or damage based upon a violation of a covenant, or violation of a covenant resulting in loss or priority of the mortgagee's title. The 9.3 also provides coverage against forced removal for buildings within a setback line on a recorded subdivision plan.

There are three CCR endorsements that can be used with owner's policies, based upon whether the land is undergoing development. The ALTA 9.1 ("[Covenants, Conditions and Restrictions – Unimproved Land – Owner's Policy](#)") provides coverage for vacant land. This endorsement provides coverage for covenant violations, but since the land is vacant there is no coverage for encroachments over a setback line.

The ALTA 9.2 ("[Covenants, Conditions, and Restrictions – Improved Land – Owner's Policy](#)") is similar to the ALTA 9.3 loan policy endorsement in that it provides coverage for covenant violations and forced removal for buildings within a setback line on a recorded plan.

The final CCR is the ALTA 9.8 ("[Covenants, Conditions, and Restrictions – Land Under Development – Owner's Policy](#)"). As with the other "land under development" endorsements, the development plans are necessary to issue this endorsement, and those plans must be identified within the endorsement with a specific plan date. Like the other CCR endorsements, this endorsement provides coverage for covenant violations; however, it includes violations relating to future improvements on the land. The forced removal for setback encroachments also includes coverage for future improvements.

Note that like the Restrictions, Encroachments, and Minerals series of endorsements covered in last week's update, the CCR endorsements provide coverage for any covenant violation – there is no requirement that the covenant be recorded in the Public Records. For that reason, we may require a more robust title affidavit to issue these endorsements.

You can review copies of these endorsements on Stewart's Virtual Underwriter website, www.virtualunderwriter.com. Links to the endorsement forms are provided above, and each form contains a link to the issuing guidelines. As always, if you have any questions as to what these endorsements cover and whether they can be issued with your policy, please contact your Stewart underwriting counsel.



Stewart's Massachusetts Underwriters Talk Title – August 21, 2024

Join Jutta Deeney, Stewart's New England Regional Underwriting Counsel, for our sixth installment of Stewart Underwriters Talk Title. Our August topic is Affordable Housing

Covenants. Jutta will lead a concise 30-minute session covering how affordable housing covenants impact the sale and refinance of property and how to avoid common mistakes in these transactions.

To register for this session and any future presentations follow the link below:

[Massachusetts Resources and Newsletters | Stewart Title](#)



In Case You Missed It – Connecticut Legislative Update

Stewart recently issued a Legislation and Case Law Update for Connecticut agents. To view this bulletin, please follow this link: [CT2024001 \(virtualunderwriter.com\)](#)



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