

Dear Stewart Partners,

We hope you are enjoying the last days of summer. In this week's installment, we are providing you with information regarding a new solar equipment related endorsement and an update to ALTA's Best Practices as well as a review and analysis of a recent Vermont Supreme Court decision impacting Short Term Rentals in Vermont and implications for issuing the ALTA 3.3 Zoning Endorsement for that use. We are also providing information on two upcoming educational opportunities in September presented by our Massachusetts underwriters.



New ALTA 50 Endorsement – Residential Solar – Loan Policy By:
Katherine F. Fletcher, Esq., Connecticut State Counsel and Associate
Senior Underwriting Counsel

When a homeowner leases or finances solar equipment, the lessor or lender will typically file a Uniform Commercial Code Financing Statement (UCC-1). Typically, the intent of a UCC-1 is to create a lien on the solar equipment, which is personal property. As a result, the solar equipment UCC-1 will not attach to the underlying real property. However, sometimes a solar equipment UCC-1 is not expressly limited to solar equipment as personal property. When this occurs, the age-old underwriting question arises of whether to include the UCC-1 as exception on Schedule B, Part 1 of a loan policy. Regardless of the answer, often lenders will not accept a UCC-1 as having a superior lien to the new mortgage and refuse to move forward unless the existing lien is terminated or subordinated, or otherwise omitted as an exception from their loan policy. For a more in-depth review of this issue, please feel free to look back at our [Midweek Update from September 2024](#).

ALTA has helped ameliorate this often-occurring issue by its recent adoption of the ALTA 50 Endorsement – Residential Solar – Loan Policy, a new endorsement for solar equipment on residential transactions involving existing one-to-four family residences. The ALTA 50 Endorsement addresses an originating lender's requirement for the deletion of the exception for recorded documents referencing leased or third-party solar equipment in order to meet Fannie Mae and Freddie Mac selling guide requirements by insuring against loss or damage incurred by the insured lender by reason of a final judicial determination that a solar power purchase agreement, a solar panel lease, or a solar financing statement constitutes an estate or interest in the land or a lien upon the title. The endorsement excludes from coverage loss arising from ingress and egress for access to the solar equipment, damage or loss of value of the underlying land because of the solar equipment and the failure of the insured lender's mortgage to encumber the solar equipment.

An example of the ALTA 50 Endorsement is available on Stewart's Virtual Underwriter, [ALTA 50 Endorsement Residential Solar Loan Policy 8-1-25](#). Currently, the endorsement is available for issuance in Massachusetts. Other New England States require new forms to be filed and approved by the Department of Insurance, and Stewart is in the process of completing the requisite regulatory filings and will alert you once this endorsement is available in all New England States.



ALTA Revised Best Practices for Preventing Deed Fraud By:
Katherine F. Fletcher, Esq., Connecticut State Counsel and Associate
Senior Underwriting Counsel

ALTA has updated its Best Practices guidelines to help title agents identify new versions of forgery and fraud crimes. The guidelines include new industry standards for use of identity verification during real estate closings, including specialized staff training on impersonation attempts, stronger controls over notary and signing agent selection, additional verification steps for third-party professionals, and the creation of protocols and procedures to respond to suspected fraud or impersonation attempts. The updated Best Practices can be found here: [ALTA Best Practices 4.2 Framework: Title Insurance and Settlement Company Best Practice \(Published 08-19-2025\)](#).



Vermont Supreme Court Decision on Short-Term Rentals in Burlington – Implications for Non-Conforming Uses and Title Insurance Zoning Endorsement 3.3 By: Jill Spinelli Quong, Esq.
Vermont State Counsel and Associate Senior Underwriting Counsel

Case Overview

In June of this year, the Vermont Supreme Court ruled that a challenge by Homeowners of short-term rental (STR) properties in Burlington must proceed in the Environmental Division, not civil court. While the decision was technically about jurisdiction, the Court's ruling sets the stage for significant litigation over whether STRs qualify as "grandfathered" non-conforming uses under the City's 2022 STR Ordinance.

Burlington's Position on Non-Conforming Use

The central issue in *In re Short-Term Rentals (Burlington)* is whether STRs can be treated as protected, pre-existing non-conforming uses. Burlington argues they cannot, for several reasons:

- **No Lawful Basis at Inception:** For grandfathering to apply, a use must have been lawful under zoning when established. The City contends that STRs were never expressly authorized under prior ordinances.

- **Commercial vs. Residential:** Burlington views STRs as a commercial activity in residential districts, akin to transient lodging. Since hotels or boarding houses were never permitted in those zones, STRs could not have been lawful residential uses.
- **Strict Construction:** Vermont case law requires non-conforming uses to be strictly construed against expansion. Without clear legal authorization, STRs fail this test.
- **Policy Considerations:** The City stresses that widespread grandfathering would undermine housing availability and affordability by diverting units from the long-term rental market.

Impact of the Decision on Title Insurance – ALTA 3.3 Zoning Endorsement

This ruling has immediate implications for title insurers and homeowners. The ALTA 3.3 (Zoning – Non-Conforming Use) Endorsement insures that the present use of the property is a lawful non-conforming use. In Vermont, the lawfulness of STRs as a non-conforming use is unresolved and actively disputed. Burlington’s interpretation effectively denies “grandfathered” status to most STR operations and if other municipalities adopt Burlington’s position, STRs could never qualify as lawful non-conforming uses, regardless of whether a municipality has an existing or future STR ordinance. For this reason, in Vermont it is not permissible to **issue the ALTA 3.3 Endorsement and identify the use as an STR until this matter is fully resolved through the courts.**

This case underscores the uncertainty surrounding short-term rentals in Vermont. Sellers can no longer rely on “grandfathered” protections and must ensure compliance with STR Ordinances. Buyers must exercise heightened due diligence, recognizing that prior operation does not establish legality and that future ordinances could restrict or eliminate STR use even after their purchase. Moving forward we anticipate ongoing litigation in the Environmental Division as courts continue to define the scope of lawful non-conforming uses for STRs. We will issue further guidance as the case proceeds to be litigated. To reach the full case, follow this link:

<https://www.vermontjudiciary.org/sites/default/files/documents/eo24-391.pdf>



Massachusetts Underwriters Talk Title Webinar – Municipal Liens – September 10, 2025

Please join Jutta Deeney, Stewart’s New England Underwriting Counsel, on Wednesday, September 10, 2025 at 10 A.M. for the next installment of our talk title series. In this webinar, Attorney Deeney will discuss municipal liens in Massachusetts, including the effect of municipal lien certificates, as well as what to do about betterments, assessments, and tax takings in the chain of title. To register, click here: [Register Here](#)



REBA Webinar – Managing MassHealth Liens – September 17, 2025

Tracie Kester, Associate Senior Underwriting Counsel at Stewart, will be presenting a webinar at 12 noon on Wednesday, September 17th on MassHealth liens. She will be joined by Julie M. Palmaccio, Senior Attorney at SKM Title & Closing Services, PC, and

Todd E. Lutsky, a Partner at Cushing & Dolan PC. The panelists will discuss recently-adopted REBA Title Standard No. 86, which addresses MassHealth Liens and Notices of Claim, as well as the SJC's Mason and Kendall decisions. They will also offer practical advice for dealing with MassHealth when a property subject to a lien or claim is being sold, as well as some planning tips to avoid MassHealth liens. The webinar is open to all REBA members. To register, RSVP to Matt Zarrella at zarrella@reba.net.



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