



Dear Stewart Partners,

Happy Tax Day! May you all receive massive tax refunds. In this week's Mid-Week Update, we review the issue of self-dealing acts of agents under Powers of Attorney and provide a summary of recent updates to the ALTA/NSPS Land Title Survey Standards. We also encourage you to save the date for a live webinar in early May presented by three of the best New England underwriters on the topic of commercial title insurance endorsements.

The beginning of May also brings two worthwhile events. Tracie Kester will also be presenting at the Massachusetts National Academy of Elder Law Attorneys Elder Law Institute and will be discussing the use of nominee trusts in the context of MassHealth planning. In addition, NELTA, the New England Land Title Association, is having its annual conference at Encore Casino in Boston. Early bird discounts have been extended through April 24, 2026. More information on both these happenings can be found below.



Powers of Attorney and the Self-Dealing Agent By: Zachary Greenfield, Esq., Maine State Counsel

To achieve uniformity among states with respect to Powers of Attorney, the Uniform Law Commission promulgated the proposed Uniform Power of Attorney Act. Among other things, the Act provides that an agent under a Power of Attorney who is not related to the principal may not use the Power of Attorney to acquire an interest in the principal's property unless the Power of Attorney contains language specifically allowing for such self-dealing transactions. Every state in New England other than Rhode Island has adopted some version of that proposed Act, and every state in New England adheres to the basic rule that self-dealing transactions are only permitted if the Power of Attorney expressly allows. However, because not all New England states adopted the entire proposed Act, or any portion of the act for that matter, each state arrives at this basic rule in different ways and with different nuances, all of which are summarized as follows:

Connecticut

While Connecticut's Uniform Power of Attorney Act does not contain a specific provision addressing the requisite authority for self-dealing by agents acting under Powers of Attorney, both its statutory forms of Powers of Attorney, and title standards call for specific authority for such a transaction. The statutory Power of Attorney form states that "[a]n agent MAY NOT use my property to benefit the agent or a dependent of the agent unless I have

included that authority in any special instructions below.” Conn. Gen. Stat. § 1-352 et seq. (2024). The relevant title standard provides as follows:

“The record may disclose a separate document signed by the . . . grantor of a power of attorney by which instrument the consent, approval or ratification of such conveyance is clearly stated. If there is such record evidence of the authorization, consent, approval or ratification, the title examiner may pass the fiduciary’s deed to himself or herself or itself as conveying a good title. If no such record evidence of authority, consent, approval or ratification appears, the title under such a deed cannot be passed until such authorization, consent, approval or ratification has been obtained from the proper person or persons in writing, which writing is then recorded in the chain of title. The writing can be brought into the chain of title by attaching it as an exhibit to a statutory affidavit made pursuant to Sec. 47-12a of the General Statutes.” Connecticut Standards of Title, 6.5, Comment 3.

Maine

Section 5-931(2) of the [Maine Uniform Power of Attorney Act](#) requires specific authority in the Power of Attorney for an agent who is not related to the principal to use the Power of Attorney to gift to the agent an interest in property of the principal, as follows:

“Notwithstanding a grant of authority to do an act described [above], unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, domestic partner or descendant of the principal may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal’s property, whether by gift, right of survivorship, beneficiary designation, disclaimer or otherwise.” 18-C M.R.S. § 5-931(2).

Massachusetts

Whereas Section 5-501, et seq. of the Massachusetts Uniform Probate Code governs powers of attorneys, it does not expressly address the issue of whether an agent may gift property of the principal to the agent. Instead, the issue is addressed by common law in Massachusetts. According to a 1995 decision by the Appeals Court of Massachusetts, the tenets of agency law require a specific grant of authority under a Power of Attorney in order for an agent to use a Power of Attorney to acquire an interest in the principal’s property, as follows:

“All fiduciaries owe the duty of utmost good faith and absolute loyalty. The quintessential mandate of that primal fiduciary duty obligates a fiduciary to act, in the absence of language in the power of attorney to the contrary, solely in and to further of the client’s interest, even at the expense of her own interest in matters connected with the agency . . . Self-dealing by an agent, in the absence of distinct authority from the principal expressly granted in the empowering instrument, is one of the most profound breaches of fiduciary duty, irrespective of the agent’s good faith and however indirect or circuitous the accomplishment of the benefit to the agent.” Gagnon v. Coombs, 39 Mass. App. Ct. 144 (1995).

New Hampshire

Section 564-E:201 of the New Hampshire Uniform Power of Attorney Act requires specific authority in the Power of Attorney for an agent who is not related to the principal to use the Power of Attorney to gift to the agent an interest in property of the principal, as follows:

“Notwithstanding a grant of authority to do an act described [above], an agent (other than an agent that is an ancestor, spouse, or descendant of the principal) may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property by any manner other than a gift, including, without limitation, by right of survivorship, beneficiary designation, or disclaimer, unless the power of attorney otherwise provides.” NH Rev Stat § 564-E:201 (2023).

Rhode Island

The Rhode Island Short Form Power of Attorney Act does not expressly require specific authority for self-dealing acts of an agent under a Power of Attorney. Likewise, the statutory form of Power of Attorney does not include a standard provision regarding self-dealing. However, in recognition of the principles of agency, Rhode Island's Title Standards calls for express authority in the Power of Attorney for self-dealing transactions, as follows:

“A power of attorney may not be used to convey property to the attorney in fact unless so specifically authorized by the terms of said power of attorney.” Rhode Island Title Standards, 3.7, 2024 Edition).

Vermont

Section 4301 the Vermont Uniform Power of Attorney Act, like Maine and New Hampshire's statutes, calls for specific authority in Powers of Attorney for self-dealing transactions unless the agent is related in certain ways to the principal, as follows:

“Notwithstanding a grant of authority to do an act described [above], unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the principal may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.” 14 V.S.A. § 4031.

As set forth above, each New England state requires an express grant of specific authority for an agent to use a Power of Attorney for a transaction in which the agent acquires an interest in property of the principal. Three states, Maine, New Hampshire, and Vermont, have adopted the recommendation of the Uniform Law Commission that such express authority only be required when the agent is not related to the principal. Notwithstanding that limitation, we urge you to closely scrutinize any and all self-dealing transactions. Whenever you have any concerns about Powers of Attorney, we encourage you to reach out to a Stewart underwriter for assistance. This includes when you are asked to rely on a Power of Attorney drafted under the laws of a state other than the state in which you are doing business. Stewart has underwriters in every state in the country, as well as in many foreign jurisdictions, who can review Powers of Attorney for compliance with local law.



Updates to the 2026 ALTA/NSPS Land Title Survey Standards By:
Frank Cammarano, Underwriting Counsel – Connecticut

ALTA and the National Society of Professional Surveyors (NSPS) have adopted the revised 2026 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys. The updated standards went into effect February 23, 2026, and replace the 2021 version as of that date.

Members of ALTA have specific needs, unique to title insurance matters, when asked to insure title to land without exception as to matters which might be discoverable from survey and inspection, and which are not evidenced by the public records.

For a survey of real property, and the plat, map or record of such survey, to be acceptable to a title insurance company for the purpose of insuring title to said real property free and clear of survey matters (except those matters disclosed by the survey and indicated on the plat or map), specific and pertinent information must be presented for the clear understanding between the insured, the client (if different from the insured), the title insurance company (insurer), the lender, and the surveyor professionally responsible for the survey. To meet such needs, clients, insurers, insureds, and lenders are entitled to rely on surveyors to conduct surveys and prepare associated plats or maps that are of a professional quality and appropriately uniform, complete, and accurate. Accordingly, the surveying profession, title insurers, and abstracters, ALTA and NSPS jointly establish the details and criteria setting forth a minimum standard of performance for ALTA/NSPS Land Title Surveys. A complete ALTA/NSPS Land Title Survey includes:

- the fieldwork required pursuant to Section Five (5);
- the preparation of a plat or map pursuant to Section Six (6) showing the results of the fieldwork and its relationship to documents provided to or obtained by the surveyor pursuant to Section Four (4);
- any information from Table A items requested by the client; and
- the certification outlined in Section Seven (7).

The revision focuses primarily on updates which increase clarity and make the standard easier to understand for everyone involved in the transaction. These changes include refined language, resolved instances of inconsistent language and additional clarity of responsibility within different sections. The standards also include a new optional item found in Table A that allows for a table of conditions and potential encroachments to be placed on the face of the plat or map. Below is an overview of the revisions to the body of the standards that surveyors, title professionals and insurers should be aware of:

1. The standards now include a refined definition of Relative Positional Precision. The revised definition more clearly explains how boundary precision is evaluated and communicated, which provides a better understanding of what survey accuracy represents and does not. This provides additional clarity for those not familiar with the measurement techniques.
2. Evidence of physical access must be “observed in the process of conducting the fieldwork.” This change reflects a broadened understanding of access from the 2021 standard requiring “visible” evidence of access.
3. Descriptions of monuments must now include the relationship of such monument to the surface of the ground, specifying that the “relationship to the ground” is an element of the characteristics of monuments.

4. Evidence of possession or occupation along the perimeter of the surveyed property should be noted, regardless of their proximity to the boundary lines. Intending to encapsulate the full picture of features benefiting and burdening the property, surveyors are no longer limited to the property lines to depict possession and occupation.
5. Utility poles on or within ten (10) feet, and other utility features on or within five (5) feet, of the surveyed property must be identified.
6. Notation is required in instances where verbal (“parol”) statements are made by relevant landowners or occupants as to matters related to title to the subject property, including boundary issues and encroachments.
7. The certification of the plat or map may be extended to successors and assigns of the lender if requested.

Table A of the standard continues to contain the optional elements of an ALTA/NSPS Land Survey. The following elements of note have been revised:

1. A note in the introduction to the section that if any of the optional items are required by law, they must be included.
2. Further explanation that features may be shown using imagery, but that the specific details of the imagery must be clarified in writing before use.
3. A new Table A item (Item 20), when selected, requires the surveyor to summarize potential encroachments in a table on the face of the survey. Such table must identify the physical conditions with respect to such encroachments and provide a means by which the conditions can be readily located on the face of the survey by the client or other reviewing party.

For most transactions, these updates should not change whether an ALTA/NSPS survey is required. However, the 2026 ALTA/NSPS standards support greater clarity and consistency across surveys, better alignment between documentation and field conditions, earlier identification of potential risks, and stronger connections between surveys and title insurance coverage. For more information or further guidance on this matter, please contact a member of your local Stewart Title Agency Underwriting Team.



Upcoming CLE Webinar

On May 6, 2026, New Hampshire underwriter Michelle Radie-Coffin, Massachusetts underwriter Mark Jones, and Connecticut underwriter Frank Cammarano, will present a live webinar entitled “Introduction to Commonly Requested Commercial Endorsements.” The webinar is free and will qualify for continuing legal education credits in Maine, New Hampshire, Vermont and Connecticut. Rhode Island accreditation is pending. Please keep an eye out for the email invitation coming soon or follow this link to register: [Register here](#)



Tracie Kester, Esq. to Present at the Massachusetts National Academy of Elder Law Attorneys Elder Law Institute

Tracie Kester, Senior Underwriter, will be speaking at the Massachusetts National Academy of Elder Law Attorneys Elder Law Institute on Friday, May 1, 2026. This will be an all-day hybrid event, with the in-person seminar taking place at MCLE New England's headquarters. There is also a virtual streaming option. The topic of this year's event is "Home Sweet Home: IOTs To Estate Recovery." To learn more about the event or to purchase tickets, see MassNAELA's website here: <https://massnaela.wildapricot.org/event-6565338>



New England Land Title Association Annual Convention – Early Bird Registration Extended

The New England Land Title Association's Annual Convention is taking place Monday through Tuesday, May 4th and 5th, at the Encore Casino in Boston. Early bird registration has been extended through April 24, 2026. To see the scheduled speakers, or to register, please go to NELTA's website here: <https://nelta.org/events/EventDetails.aspx?id=2042759&group=>

We hope to see you there!



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