

Dear Stewart Partners,

Happy October! It is hard to believe that we have entered the last three months of 2022.

In this week's update we are sharing with you some of the advocacy that American Land Title Association (ALTA) is undertaking on behalf of title agents and the title insurance industry. As you may have heard, Fannie Mae and Freddie Mac are accepting in limited circumstances an attorney's opinion of title in lieu of a title insurance policy. Read below for more details on ALTA's advocacy and why this is a risky alternative.

In addition, we are including some title search tips. The foundation for every title policy is a title search and examination. The search and examination are complicated processes and require skilled personnel with knowledge of what records need to be searched. In Massachusetts a title search requires not only a search of the records at the registry of deeds, but probate records as well. In certain instances, other court records may also need to be reviewed. Establishing good practices will help avoid future problems. The tips below will aid you in establishing good protocols and help you avoid pitfalls. Also, a good search and analysis of the title is critical to provide a correct and adequate certification under G.L. c. 93 s. 70. This statute requires attorneys who represent lenders on most residential purchase transactions to provide this title certification to both the mortgagor and mortgagee.



### **ALTA Warns Alternatives to Title Insurance Increase Lender and Consumer Risk**

Fannie Mae and Freddie Mac have both begun to accept written attorney opinion letters (AOLs) as to the marketability of title in limited circumstances. At least one company has launched a product stating it can provide the required AOL in compliance with Fannie and Freddie guidelines. ALTA has been advocating against this approach with state regulators, the Federal Housing Finance Agency (FHFA), Fannie, Freddie and lenders. In a post on its site, ALTA reports that, "[it] has engaged with the FHFA and government sponsored entities (GSEs) to help them understand the differences between title insurance and alternative products in the coverage and protection they provide. ALTA believes it is irresponsible for lenders to offer title insurance alternatives that provide less coverage but introduce more risk to lenders and consumers. ALTA continues to work with the GSEs to ensure that access to sustainable homeownership opportunities is available for all Americans in a way that does not increase risk or undermine the property rights of homebuyers, particularly low- and moderate-income and first-time homebuyers."

ALTA has developed several different downloadable pieces highlighting the risk of the alternative products and the value of title insurance. To view ALTA's post, read about its advocacy efforts, and access the materials, follow this link:

<https://www.alta.org/news/news.cfm?20221003-ALTA-Warns-Alternatives-to-Title-Insurance-Increase-Lender-and-Consumer-Risk>



## **Title Search Tips – Avoid These Traps**

1. **Hiring inexperienced title examiners who are not covered by your Errors and Omissions Insurance.** A good title examiner is an experienced title examiner. Many of the issues that they spot could be missed by the untrained eye. However, even the most experienced examiner can make a mistake, which is why you should make sure your independent examiners have E&O coverage and review your E&O policy to ensure that any staff or contracted employees who do this work for you are covered.
2. **Failing to set up specific procedures for your employees or outsourced abstractors/examiners to follow with every search.** Establish specific, basic procedures so all pertinent information is pulled and examined. This will set the expectation for your examiner as to what you expect to be examined and what documents you expect will be provided in your search package.
3. **Failing to reference the legal description when reviewing the chain of title documents or searching the public records.** Remember the legal description controls what property is conveyed in the transaction, not the address.
4. **Failing to pull documents from the land records. Remember, the grantor/grantee indices are reference tools only and not the public record.** Relying on the indices to eliminate a document may be risky. A mortgage may only reference one street address but encumber multiple properties. Also, reliance on a marginal reference that a mortgage is discharged can be problematic as there is no way to know that the correct entity provided the discharge. The only way to determine the effect on title is by reviewing the document itself.
5. **Failing to review chain documents and ensure there are no missing instruments.** Be sure to review instruments carefully to find defects in the chain of title. Granting clauses are important and can create technical defects which result in title issues.
6. **Failing to review court proceedings that grant title rights for errors.** If there was a transfer of title due to a court ruling, like quiet title, foreclosure, or bankruptcy, those documents should be examined for any issues that might affect the title.
7. **Failing to pull back title documents.** Exceptions and requirements from the prior title work should be reviewed, even if they remain as exceptions in current policies. Items such as rights of first refusal or restrictive covenants may impact the present transactions and require the recording of compliance documents. Sometimes these items are buried in an exception document, and the title of that document doesn't necessarily alert you to these items. One such example is land disposition agreements.
8. **Not reviewing the work of your title examiners.** The title search is completed by the searcher or title examiner, but the review and analysis of the search product should be completed by the attorney. Of course, should you have any questions whether something in the search presents an issue or concern, reach out to your Stewart Underwriter, we are here to help.

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