

Dear Stewart Partners,

We hope all of you enjoyed the long holiday weekend and had the opportunity to spend time with family and friends on Thanksgiving.

In this week's update we are highlighting some recent changes to REBA's Title Standards and one new Practice Standard, all of which were adopted at REBA's recent November conference. We are also including an article on title insurance alternatives, and why they aren't a great choice. This is a topic that we've seen discussed quite a bit lately given Fannie Mae's announcement in April that it would be accepting such opinion letters in limited circumstances. We've also included several links to ALTA's advocacy on this topic which you can use to address questions you receive from lenders.



### **REBA adopts updates to Title and Practice Standards at its November Meeting**

At REBA's annual meeting and conference on November 14, 2022, a new Practice Standard and amendments to two existing Title Standards were adopted.

The amended Title Standards are Title Standard 40 - Transfers by Devisees under a Will containing a Power of Sale, and Title Standard 76 - Internet-Based Title Information Sources.

The changes to Title Standard 40 were significant. The updated Standard makes clear that it applies to a Will giving the Personal Representative a discretionary power of sale, not a Will that requires the PR to sell the property. The amendment also adds changes based upon the adoption of the MUPC (MGL c. 190B) including so-called "Late and Limited" proceedings, and the use of Closing Statements (Form MPC 850).

The changes to Title Standard 76 were brought about by the merger of the Office of Thrift Supervision and the Office of the Comptroller of the Currency. The comments to the Title Standard also contain updated links to several governmental websites. These websites can be extremely helpful, particularly when trying to determine whether older mortgage assignments or discharges are coming from the correct entity. The updated standard eliminates the need to record copies of the internet-based sources with an affidavit.

The new Practice Standard 31 also deals with Internet-Based Title Information Sources, and provides a mechanism for recording of the information by using an affidavit under MGL c. 183, s. 5B if appropriate in the circumstances.

REBA members can review the updated Title Standards and the new Practice Standard on REBA's website: [www.reba.net](http://www.reba.net)



### **A Letter From a Lawyer is No Substitute for Title Insurance**

In a recent article written by Eric Miller for RealClear Policy, the author analyzes why an attorney opinion letter (AOL) is not a good alternative to title insurance. Mr. Miller accurately points out that an attorney's opinion is just that, an opinion based on a search provided to the attorney. It isn't coverage

against unknown risks, which is what title insurance is. He also notes that title insurance provides coverage for those risks that aren't generally discoverable in a search, such as fraud or mis-indexed documents. You can read the full article here:

<https://www.realclearpolicy.com/articles/2022/10/31/an-letter-from-a-lawyer-is-no-substitute-for-title-insurance-861937.html>



## **ALTA's Advocacy**

ALTA continues to take the lead in engaging with state regulators, the Federal Housing Finance Agency (FHFA), Fannie Mae and Freddie Mac, and lenders about the risks alternative title insurance products - including certain attorney opinion letters (AOLs) - present to lenders and consumers. ALTA has a full page on its website dedicated to this topic and provides a host of talking points, presentation links, and articles on the topic. You may find the information on this site useful if you receive questions from your lender or Realtor partners about attorney opinion letters. To view, follow this link:

<https://www.alta.org/advocacy/risks-of-alternatives-to-title-insurance.cfm>



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