



Dear Stewart Partners,

As we enter the month of December with holidays and the end of the year fast approaching, we highlight this week some of the benefits afforded by the American Land Title Association (ALTA) which provides not only the title policy forms used to insure titles but also its many resources available to members and non-members. In addition, for our Connecticut issuing agents, we are including some general information on private restrictions and their impact on title.

Lastly, we are highlighting once again the topic of seller impersonation fraud. This week alone, our agents successfully detected and stopped two distinct attempted frauds in New England. In both instances, our agents contacted the purported seller by mail at the address listed in the tax assessor's records. This simple step was critical in stopping the fraudulent land sales. This fraud is real and happening in our region, don't become a victim.



The Benefits of an ALTA Membership

ALTA, the American Land Title Association, is the premier association for title and settlement service agents. ALTA's primary purpose is to help its title insurance industry members succeed professionally. In addition to the advocacy ALTA does on behalf of the industry, ALTA provides publications, education, and marketing pieces to help you succeed. To see the full range of member benefits, follow this link: [ALTA - Membership Benefits](#)

ALTA also provides many resources to non-members. These include information on wire fraud, Best Practices, the homebuying process and other resources. One such useful resource is the failed/merged title insurance underwriter list. As the title industry has consolidated over the years, often a client might have an owner policy with a company that no longer exists or has been merged into a larger insurer. See the current list of insurers and consolidation here: <https://www.alta.org/business-operations/title-insurance-mergers>



Duration and Enforceability of Private Restrictions in Connecticut

Private restrictions are found in many titles and most often related to residential property. Restrictions can range from limiting or prohibiting specified uses (such as commercial businesses, raising animals, dwelling house limits and many more). They are not favored by courts; deemed in derogation of common law rights to use land for all lawful purposes. As such, they are governed by intent and if ambiguous, generally construed against the grantor.

While there is a statute of limitation as to the enforceability of a violation of a restriction in Connecticut – Conn. Gen. State 52-575a – 3 years from visible violation of a restriction without enforcement by party with right to do so renders it unenforceable, there is also a plethora of case law on the subject. In many cases, the covenants can be more restrictive than zoning laws and regulations.

There are generally three types of restrictive covenants:

1. Mutual covenants in deeds exchanged by adjoining landowners (rare)
2. Uniform covenants in deeds executed by the owner of a subdivision when lots are sold (“uniform scheme of development”)
3. Covenants placed in a deed from a grantor to a grantee of adjoining property for benefit of grantor’s retained land

Scenarios #2 and #3 above are the most common restrictive covenants. An analysis of the chain of title will reveal which type of restrictive covenant one is dealing with. If the legal description is of a lot on a map, the restriction is likely a uniform scheme restriction. To determine with certainty, a review of the title to the adjacent lots will reveal if other lots are similarly restricted. Following are factors to establish intent to create common scheme:

1. Selling of entire tract (grantor kept nothing)
2. Filing of map of entire tract when first parcel sold
3. Substantial uniformity in deed restrictions for all lots

Next, one must consider who has the right to enforce the private restriction:

1. In a retained benefit scenario it is the original grantor and successors in title to that benefited parcel
2. In a uniform scheme of development there are mutual rights of enforcement among all lot owners who are similarly restricted

In addition to the statute of limitations cited above, there are numerous equitable defenses that can be raised by a defendant in an enforcement action:

1. Change in conditions – i.e., residential area now very commercial
2. Abandonment
3. Waiver
4. Laches
5. Unclean hands

As this is a very litigious area in Connecticut and a fact-based analysis is often needed to determine questions on the subject, please contact your underwriter for guidance when insuring a transaction. If you have a question on how the restrictive covenant should be

noted on your commitment or title policy or if there is information that indicates that a restrictive covenant impacting the land has been violated.



Seller Impersonation Fraud

Within the last 7 days, we've learned of two distinct seller impersonation scams in New Hampshire. Of course, there are probably many more throughout New England, and although we weren't happy to hear that an agent, buyer, and land owner were almost victims, we were thrilled to learn that in both cases, the use of the "hello" letter sent to the owner at the address on file with the tax collector's office triggered the real owner to alert parties in the transaction that the property wasn't for sale.

This simple step was crucial in both of these recent cases and helped avoid the fraud. In both attempts the imposter sellers had engaged known real estate agents and had been communicating with the real estate agents like any seller would. The real estate agent didn't appear to identify the transaction or seller as suspicious, listed the properties for sale and both properties went under contract. We are so grateful that our agent was on the alert, identified the red flags, and took the extra verification steps to vet the seller, which resulted in a significant loss avoidance.

A sample "hello" letter is linked within this Stewart Bulletin which discusses vacant land fraud:

[CLAIMS AVOIDANCE - Fraudulent Land Sale Prevention Bulletin](#)

Knowing red-flags to help detect seller impersonation scams is critical, and we recommend that you review the following Stewart bulletins: [Fraudulent Land Sales and Prevention Bulletin](#) and [Fraudulent Land Sale Scheme Bulletin](#)



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