



New England Regional Midweek Update
2/14/2024

Dear Stewart Partners,

Happy Valentine's Day! Although this update doesn't come with a box of chocolates, we do have some underwriting treats for you! This week's update focuses on several items that are of general underwriting interest that title agents should be aware of. Our first article reviews PACA-PSA trusts and related underwriting requirements. Our second topic highlights underwriting considerations when a fiduciary uses a power of attorney (POA) to convey real estate. Last, but definitely not least, we have included a link to February's Security Awareness newsletter, OUCH! This month's newsletter provides some great tips for identifying and preventing financial identity fraud. Feel free to share this newsletter!



What is a PACA Trust or PSA Trust? By: Katherine Fletcher,
Associate Senior Underwriting Counsel, Connecticut

Congress enacted The Perishable Agricultural Commodities Act (7 U.S.C. 499a et seq.) to protect agricultural produce suppliers who were commonly subjected to wrongful/unfair business practices. Over the years, provisions were added to the statutes which establish trusts for the benefit of unpaid sellers and suppliers. The beneficiaries of the statutory trusts are the suppliers, and the trustees are the vendors or "dealers." The trust acts as a lien over perishable agricultural commodities, products derived from those commodities, and any proceeds from the sale of those commodities, until full payment is received. Federal law does not require that the unpaid suppliers, sellers and agents file a notice, lis pendens, or claim of the trust in the real property records. The trust can be superior to the rights of third parties, such as mortgagees, dealing with the commission merchant, dealer or broker. Even a bankruptcy cannot avoid the priority of the trust.

The trust can apply to all assets, including real estate as proceeds from the resale of the fruits and vegetables, acquired by a commission merchant, dealer or broker. The trust may be terminated only by paying all suppliers in full prior to the applicable transaction (but this is something we cannot determine with certainty while underwriting these transactions).

Examples of parties whose assets may be subject to a PACA trust include:

- Food processors, truckers, food wholesalers, grocery wholesalers, food service firms, produce dealers, packers, distributing companies, canners, processing plants, wineries, distilleries, and breweries.
- Grocery chains and supermarket chains.

- Chain restaurants and other major restaurants.

A company name may suggest the applicability of PACA, such as a name that includes "food" or a type of food, "produce," "packing," or "distributor."

The Packers and Stockyards Act (7 U.S.C. 181 et seq.) also establishes a similar trust on assets of packers to protect livestock producers. In 7 U.S.C. 182, "livestock" is defined as cattle, sheep, swine, horses, mules, or goats, whether dead or alive, and "poultry" is defined as chickens, turkeys, ducks, geese and other domestic fowl. A "packer" whose assets are subject to the trust is defined in 7 U.S.C. 191 as a person in the business of (a) buying livestock in commerce for purposes of slaughter, or (b) manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) marketing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce.

Examples of parties subject to the PSA trust may include stockyards, supermarket chains, wholesalers and retailers of meat products, meat packing companies, meat processing companies, farms that purchase livestock and poultry for slaughter, and grocery chains.

Underwriting a PACA or PSA Transaction:

Please contact a Stewart underwriter if you are working on a transaction that involves, or you think may involve, a party whose assets may be subject to a PACA-PSA trust. If you are issuing 2006 ALTA Owner's Policies and/or 2006 ALTA Loan Policies, and your transaction involves a party whose assets may be subject to a PACA-PSA trust, the policies must include the following exceptions, as the case may be:

For PACA transactions:

"Any trust, right, interest or claim that may exist, arise, or be asserted against the Title under or pursuant to the Perishable Agricultural Commodities Act of 1930, as amended, 7 U.S.C. 499a, et seq., or any similar state or federal law."

For PSA transactions:

"Any trust, right, interest or claim that may exist, arise, or be asserted against the Title under or pursuant to the Packers and Stockyard Act of 1921, as amended, 7 U.S.C. 181, et seq., or any similar state or federal law."

The 2021 ALTA Owner's and Loan Policies include a new PACA-PSA Exclusion and definition of PACA-PSA Trust that is a substitute for the PACA-PSA exceptions required when using previous ALTA policies, so the foregoing exceptions are not necessary if the 2021 policies are being issued.

If the PACA-PSA Exclusion does not appear relevant to the transaction as described in our PACA-PSA Bulletin SLS2014001 (link below), and the customer requests deletion of the PACA-PSA Exclusion from the 2021 ALTA Owner's Policy or the 2021 ALTA Loan Policy, please contact a Stewart Title Guaranty Company Underwriter. A Stewart Title Guaranty Company Underwriter may approve issuance of the STG Deletion of PACA-PSA Exclusion Endorsement to the 2021 ALTA Owner's or the 2021 ALTA Loan Policy.

The 2021 homeowner's and 2021 expanded coverage residential loan policies do not contain an exclusion, but an exception is not required.

References:

[Bulletin: CT2021008 -The Perishable Agricultural Commodities Act and The Packers and Stockyards Act \(PACA-PSA\)](#)

[Bulletin SLS2014001 - UNDERWRITING - The Perishable Agricultural Commodities Act \(PACA\) and The Packers and Stockyards Act \(PSA\)](#)



Fiduciaries use of a Power of Attorney (POA) when conveying real property. By: David Piechota, Underwriting Counsel, Connecticut

We often see situations where a power of attorney is used to convey property. This article addresses when a fiduciary may or may not use a power of attorney to appoint someone to execute conveyance documents for a closing. The fiduciaries commonly referred to herein are trustees, executors, administrators and conservators. As a general rule, a fiduciary cannot simply appoint someone to take their place unless they are specifically given this power. The scope of power for fiduciaries varies significantly based on their defined roles and the specific circumstances of the estate or trust they are managing. Their powers are different and dependent on the type of fiduciary and the source of their authority.

The authority of a trustee to act on behalf of the trust is controlled by the terms of the trust. The trustee is required to administer the trust in good faith, in accordance with its terms and purposes. The terms of the trust grant to the person or entity holding the position of trustee authority over the trust assets. Only the trustee can delegate that authority, not the beneficiary of the trust, and the trustee can only delegate that authority if the terms of the trust authorize the trustee to do so. The authority of a trustee is derived from the terms of the trust document and along with statutory and common law is the guide for determining what a trustee is authorized (or prohibited) from doing.

If a trust document permits a trustee to delegate certain powers, it is important to carefully review the power of attorney being relied upon for that delegation. For example, if the POA is given by the principal in their individual capacity, without reference to the role or position of the principal as the trustee, the agent/attorney in fact may not use that POA to sign for the principal in their capacity as a trustee of a trust. This is true regardless of the powers contained in the POA. Therefore, the POA must be signed granting the authority of the principal in his/her trustee capacity for a trustee to utilize powers to delegate and use a POA for a conveyance of trust property. This also presumes that the underlying trust authorizes the trustee to delegate its powers.

The authority of an executor or personal representative (PR) to act on behalf of the estate is controlled by the terms of the Will. The terms of the Will grant the executor or PR, not the individual, authority over the estate assets. The Probate Court can permit an executor or PR to delegate that authority, but the delegation would typically require a court order or approval. Although highly unusual, a will could permit an executor or PR to delegate its

responsibilities, but any conveyance of real estate being undertaken by someone who is not appointed by the Court would require underwriter approval.

An Administrator and a Conservator, both court appointed positions, may not use a POA unless the Probate Court specifically authorizes it.

If you have any questions about the use of a Power of Attorney in your transaction, particularly by a fiduciary, please reach out to your local underwriting counsel. We are always here to assist.



OUCH! February 2024 Newsletter - Preventing and Detecting Identity Theft

As identity theft continues to be rampant, being able to detect a scam and prevent becoming a victim is important. Personal data in the digital age is highly sought after and needs to be protected. In this month's newsletter, OUCH! Explains what identity theft is and provides tips for prevention and detection. Take a moment and read through the newsletter and share it with colleagues, friends, and family. Check out the newsletter here: [SANS OUCH! Newsletter | Identity Theft: Preventing, Detecting, and Responding | February 2024](#)



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