



Dear Stewart Partners,

Welcome to March! We hope your March is more lamb than lion. In this week's update, we are highlighting some of the key considerations to keep in mind when title is coming from a legal entity. We are also providing you with summaries of a recent U.S. Federal Court decision in favor of a title and escrow agent, and a Maine Supreme Judicial Court decision setting forth rules for deed interpretation regarding ownership of the intertidal zone. Finally, as you know Stewart continues to provide you with up-to-date information on the 2021 policy forms. This week, we are providing a link to a Stewart white paper highlighting changes between the 2006 and 2021 forms and tips especially useful for commercial transactions. Also, don't miss the registration link at the bottom of this Midweek Update for our Upcoming Webinars on title commitment and policy preparation.



Entity Transfers – Considerations

Special consideration is required when insuring transfers of title, by deed or mortgage, out of an entity. Significant concerns include, but are not limited to, legal existence, authority, fraud, and the Geographic Targeting Orders issued by the Financial Crime Enforcement Network. First, confirm the entity had legal existence when it took title and that it continues to have legal existence when the entity conveys out. Note that the grantor must be the entity that took title and not a manager or officer of the entity. Title goes out the same way it came in. If the entity has been dissolved or canceled, certain states have statutory provisions that permit the entity to continue in existence for the purposes of winding up the affairs of the entity. Winding up affairs does not include granting a mortgage. If you are being asked to insure a transaction where there is a potential lack of legal existence or winding up is involved, contact your Stewart underwriting partner for guidance.

Second, consider the authority of the individuals signing the document. If your state offers statutory protection when documents are executed by designated individuals, follow the statutory requirements. Delegation of authority may be possible provided it is permitted by the entity documents or by statute. Consider the type of entity and proper form of delegation. Of course, if you have any questions, your Stewart Underwriting Counsel is always available to assist and provide you with the necessary underwriting requirements for a particular situation. If you are issuing a title commitment, be sure to include the necessary requirements in your commitment. This helps provide a road map to the parties

in the transaction and will help the parties anticipate what documents will be necessary in order for you to insure the transaction.

The third consideration is fraud. Where corporate documents are available online, take a look at them and confirm whether there were any recent changes. If so, ask questions and confirm that the changes make sense and no one has made any unauthorized filings. Be on the lookout for things like an existing co-owner/co-member having been recently removed or a stranger assuming the role of member, manager, or authorized signatory. If you suspect fraud or see any red-flags, continue to inquire until you receive a satisfactory response that removes all your concerns. One way to help resolve any questions is to send a confirmation/thank you letter using regular mail to the seller at the address shown for that seller in the county tax records. Stewart has created a letter for such purposes. To view and download the sample letter follow this link to Stewart Bulletin: SLS2022004 here: [SLS2022004 \(virtualunderwriter.com\)](https://www.virtualunderwriter.com/SLS2022004) and access the letter by link within the bulletin.

Finally, if the land to be insured is in the Massachusetts counties of Suffolk or Middlesex or the Connecticut county of Fairfield, the transaction may be subject to a Geographic Targeting Order issued by the US Department of Treasury Financial Crimes Enforcement Network (FinCEN). If your transaction is in these counties, a specific requirement must be added to the title commitment. For the required language follow this link to Stewart Bulletin SLS2022009: [SLS2022009 \(virtualunderwriter.com\)](https://www.virtualunderwriter.com/SLS2022009). Reporting is required when the buyer is a legal entity, buying for cash in one of the above counties, with a sale price greater than \$300,000.00. See the bulletin for details. If reporting is required, you, as a Stewart agent, may file directly with FinCEN or forward a completed ALTA Information Collection Form to FINCENreports@stewart.com and Stewart will process the filing for you.

As always, our Stewart Underwriting team is here to help. Please reach out with any general or transaction specific questions.



Title/Escrow Agent Prevails against E & O Carrier on Wire Fraud Claim

In *Valero Title Inc. v. RLI Ins. Co.*, No. 22-20155 (5th Cir. Feb. 1, 2023), the U.S. Court of Appeals for the Fifth Circuit affirmed the District Court's decision finding coverage for an escrow agent's loss arising out of its reliance on fraudulent wiring instructions.

Valero Title Inc. purchased a crime-protection policy from RLI Insurance Co. Thereafter, a Valero employee received fraudulent wire instructions from a fraudster posing as a lender's employee. Valero provided the wire instructions to its bank, which in turn wired funds meant as a mortgage payoff to the fraudster, who absconded with the funds. Valero suffered a \$250,945.31 loss as a result of the scheme. Valero timely filed a claim with RLI under its crime-protection policy. RLI denied the claim.

Valero sued RLI and its insurance agent that sold it the policy in the U.S. District Court for the Southern District of Texas. Eventually, the District Court granted summary judgment in favor of Valero on the issue of coverage, but against Valero on its claims against its insurance agent. The story didn't end there, however, because RLI appealed the coverage

decision to the U.S. Circuit Court of Appeals for the Fifth Circuit and continued to pursue its argument that the policy didn't provide coverage for the agent for this loss. The Fifth Circuit affirmed the District Court's finding of coverage in favor of Valero. The Fifth Circuit's decision can be found here: <https://casetext.com/case/valero-title-inc-v-rli-ins-co>

Although this case represents a victory for title and escrow agents in that both courts found coverage under the crime-prevention policy, the time and expense associated with litigating this matter no doubt took its toll on Valero. It goes without saying that avoiding the claim in the first place would have been ideal. This could have been accomplished through implementing and strictly enforcing internal wire verification procedures, and by engaging the assistance of wire verification services. One such provider to consider is CertifID (<https://www.certifid.com/>). Stewart has partnered with CertifID, a leading provider of money transfer protection, and offers special pricing for Stewart agents. To learn more, please reach out to our account service representative or state manager for information.



Maine Supreme Judicial Court Reverses Superior Court's Determination of Intertidal Ownership

A recent Maine Supreme Judicial Court decision, *Mabee, et al. v. Nordic Aquafarms Inc., et al.*, 2023 ME 15, establishes a clear guide for deed interpretation when attempting to determine ownership of Maine's intertidal lands (the area between the low-water and high-water lines).

In 2018, Nordic Aquafarms Inc. announced plans to develop a salmon aquaculture facility in Belfast, Maine. The plan included the burial of pipes through intertidal land claimed by Richard and Janet Eckrote, who owned the immediately adjacent upland property. Jeffrey Mabee and Judith Grace also claimed ownership of the subject intertidal zone and objected to the plan. After the trial court denied more than a dozen competing dispositive motions, a trial was held on, among other things, the issue of ownership of the intertidal zone. Among the trial court's rulings was that Mabee and Grace failed to establish title to the intertidal zone adjacent to the Eckrote upland parcel.

The Maine Supreme Judicial Court, sitting as the Law Court, vacated the trial court's decision regarding ownership of the intertidal zone, and awarded the same to Mabee and Grace. In so doing, the Law Court set forth a clear guide for deed interpretation relating to intertidal lands in Maine. In summary, the key rules as described in the decision are as follows:

- Pursuant to the Massachusetts Colonial Ordinance of 1641-47, the upland owner presumptively owns the intertidal land when deed language includes a call to the subject body of water.
 1. Deed calls that run "to" the "Atlantic Ocean," "ocean," "cove," "sea," or "river" trigger the presumption.
- Notwithstanding the above presumption, title to the intertidal zone may be severed from the upland parcel.

1. Deed calls “to” and “by” the “shore,” “beach,” “bank,” or sea shore” may defeat the presumption.

- “[W]here the two ends of a line by the shore are at [the] high water mark, in the absence of other calls or circumstances showing a contrary intention, the boundary will be construed as excluding the shore.” *Whitmore v. Brown*, 100 Me. 410, 416, 61 A. 985 (1905).

The Law Court’s full decision, which relied upon an exhaustive review of the parties’ chains of title and the language of the deeds therein, addresses various other rules of construction, and can be found here:

<https://www.courts.maine.gov/courts/sjc/lawcourt/2023/23me015.pdf>



NEW! White Paper: Understanding the 2021 ALTA Policies

Stewart has been educating our agents on the 2021 Form ALTA Policies, which are now available to many through the various title production systems used by our agents. To be in the know, be sure you check out the recorded webinars on both the owner and loan policy changes. Email your state underwriter or sales representative to obtain a link to listen. If your state requires CLE credits, these webinars may qualify and are well worth checking out. Also, be sure to see the writeup in Stewart’s Midweek Update from February 22, 2023, for information on Stewart’s Gold Endorsement. This endorsement is available to be issued with Stewart Homeowner’s policies insuring a single-family, owner-occupied residence, and provides valuable additional coverage for your clients for no additional cost. Finally, for those of you interested in a “deep dive” see the Stewart white paper available for download at this link: [white paper download!](#) The white paper is particularly helpful when issuing commercial policies and includes useful practice tips.



Two Upcoming Stewart Webinars

Stewart is pleased to invite you to register for two March webinars presented by our New England Underwriting Team. The first webinar will focus on Title Commitment Preparation and the second will focus on Title Policy Preparation. While this is intended to be a two part series, you may sign up for one or both of these webinars. The webinars are open to all levels of title insurance professionals, so whether you're a seasoned pro or just starting out, you're sure to take away valuable insights and information that you can put into practice right away.

Topic: [Commitment Preparation](#)

Date: March 9, 2023

Time: 10:00 a.m.

Location: Live online webinar. You will receive a "You're Registered" email from Microsoft Teams which will include a link to join the event.

Register: [Click here to register](#)

CLE credit is available for the above webinar in NH, CT, RI and VT. We are applying for approval in ME and will let our Maine registrants know as soon as it is received.

Topic: [Policy Preparation](#)

Date: March 23, 2023

Time: 10:00 a.m.

Location: Live online webinar. You will receive a "You're Registered" email from Microsoft Teams which will include a link to join the event.

Register: [Click here to register](#)

CLE credit is available for the above webinar in NH, CT, RI and VT. We are applying for approval in ME and will let our Maine registrants know as soon as it is received.



[Meet Our Team | Stewart Connecticut](#)

[Meet Our Team | Stewart Maine](#)

[Meet Our Team | Stewart Massachusetts](#)

[Meet Our Team | Stewart New Hampshire](#)

[Meet Our Team | Stewart Rhode Island](#)

[Meet Our Team | Stewart Vermont](#)



1-800-STEWART
www.stewart.com

© 2023 Stewart. All rights reserved.

This email was sent to your address because your email preferences are set to receive our updates.

[unsubscribe](#)