



Dear Stewart Partners,

This week marked the official first week of Spring and our third month of providing Stewart's New England Midweek update. We hope you are finding our updates informative. In this week's update, we have included a link and a short summary of an Underwriting Bulletin that was issued to all Stewart agents relating to the recent bank closures and the FDIC takeover of Silicon Valley Bank and Signature Bank. The bulletin was distributed yesterday, but in case you missed it, please take a moment to review it. In addition, we are including a review of powers of attorney in Connecticut and the recent passage of a bill replacing Vermont's existing power of attorney statutes with the Vermont Uniform Power of Attorney Act.

As a reminder, please note we have one more back-to-basics webinar in our 2021 Policy Series happening tomorrow. If you haven't yet registered for tomorrow's policy preparation webinar and want to listen in, we've included the registration link at the bottom of this Midweek Update.



Underwriting Bulletin: SLS2023004 – FDIC Takeover of Silicon Valley Bank and Signature Bank

On March 10, 2023, and March 13, 2023, respectively, the FDIC was appointed the receiver of Silicon Valley Bank (SVB) and Signature Bank. SVB was headquartered in California but had operations in Massachusetts based on its acquisition of Boston Private Bank & Trust Company in 2021. Signature Bank was headquartered in New York.

As set forth in the bulletin, the situation with both banks is fluid and evolving. The initial step by the FDIC was to create two bridge bank entities to take over the operations of the banks after the FDIC was appointed receiver. It is important to stay up to date on developments at the bridge banks, and successor entities to the bridge banks. This information is readily available by following the links in the bulletin. The bulletin provides the following specific underwriting guidance as it relates to various scenarios that our agents may encounter in the upcoming days and months.

Payoffs of Existing Loans

If you have received a payoff statement from a closed bank, obtain written confirmation from the FDIC or the bridge bank that the amount, payee, and wiring instructions are the same as stated in the original payoff. Any changes to any of these must be independently verified, as described below.

Lien Releases for Paid Off Loans

If you have paid off a loan to a failed bank or you pay off a loan now held by a bridge bank, monitor the file until a discharge/release/satisfaction/reconveyance, as applicable, has been received and recorded. Establish a tickler system to confirm recording. Finally, forward a copy of the release instrument to your underwriter and notify your underwriter if a release instrument is not received within a reasonable time period. The FDIC also provides a dedicated web page to assist with obtaining a lien release where the loan was paid off to a closed bank, but the lien was not released: [FDIC-Obtaining a Lien Release](#)

New Loans (Sales and Refinances)

Request written confirmation from the bridge bank of their intention to proceed with the loan. Verify receipt of instructions from the bridge bank (or ratification of prior instructions from the closed bank) and receipt of the loan funds.

Construction Loans (New and Existing)

Before issuing any loan policy insuring a construction loan, date down endorsement, or ALTA 33 Disbursement Endorsement to an existing loan policy insuring a construction loan, request written confirmation from the bridge bank of their intention to continue funding the loan. You must obtain approval from a Stewart Title Guaranty Company Underwriter before issuing any loan policy insuring a construction loan, date down endorsement, or ALTA 33 Disbursement Endorsement.

Assignments

Insuring an assignment of a mortgage previously held by a failed bank, now held by a bridge bank, requires a recordable assignment from the bridge bank.

Scams

Given the fluid nature of the situation, there is a heightened risk of fraud related to transactions concerning these banks. Please be alert to possible scams, in particular, payoff scams involving wire fraud. These may involve altered or fraudulent wiring instructions, among other scams. New wiring instructions from a bridge bank, or changes in previously received verified wiring instructions, must be independently verified through the FDIC's authorized communications methods, available in the FAQs for each closed bank, or by communication with a verified loan officer at the bridge bank.

To view the complete bulletin, follow this link: [FDIC Takeover of Silicon Valley Bank and Signature Bank](#)



Powers of Attorney in Connecticut

Most of us are familiar with a power of attorney ("POA"). A POA is a document where one person (the "principal") appoints another person (the "agent") to act for them. A POA

specifies the powers a principal gives to their agent, and such powers can be limited or broad.

In Connecticut, the Uniform Power of Attorney Act (C.G.S. CGS §1-350 to 1-353b) (the "Act") provides two POA forms that are often used. The statutory "short form" POA lists only the powers given to the agent. The form is considered "short" because it does not include a paragraph that describes each power in detail and does not provide for estate planning powers. The statutory "long form" POA gives the agent additional estate planning powers. The Act is extensive and contains numerous statutory definitions and provisions regarding agent duties, liability, and compensation, among others. A comprehensive review of the Act is suggested before utilizing a POA for any specific matter/purpose.

While the use of a statutory form POA is common in Connecticut, it is not mandatory. No specific form is required under the Act, or the law in general, to create a POA. Subject to review, Stewart will accept a POA that is (i) dated, (ii) executed by the principal or at his/her direction by someone in the principal's "conscious presence", (iii) witnessed by two witnesses, and (iv) acknowledged.

Often, practitioners come across a POA that was signed in another state and on an unfamiliar form. In general, POAs signed in other states will be recognized in Connecticut provided the aforementioned requirements are satisfied in conformity with the laws of the state where the POA was executed. Also, it is important to confirm that the POA is durable (does not terminate upon the incapacity or disability of the principal). Please note that a POA executed in Connecticut and created under Connecticut's Act is presumptively durable unless it expressly terminates upon the "incapacity" of the principal as defined in the Act. Since this might not be the case in other states, as noted above, when reviewing a POA from another state, always confirm the POA is expressly durable.

Regardless of the form of POA being used and the state where the POA was executed and created, a practitioner must review the POA to confirm that the POA authorizes the agent to take the action at hand. By way of example, if the agent is signing a mortgage on behalf of the principal, the POA must provide authority to mortgage the property (as opposed to sell). In Connecticut, words authorizing the agent to sell and convey property do not permit the agent to mortgage the property.

With respect to a real estate transaction, the original POA must be recorded on the land records immediately prior to the deed, mortgage or other applicable instrument. Occasionally, the original POA has already been recorded in connection with a prior transaction. In such case, a copy of the previously recorded POA can be certified by the clerk where the POA is recorded, and such certified copy can be presented for recording in the new transaction. However, there are instances where recording a certified copy of the recorded POA may not be necessary (i.e. a subsequent transaction in the same town). In such instances, please reach out to your Stewart underwriter for guidance.

POAs which are a more than a year old are often presented for review. In such instances, inquiry should be made as to why the principal cannot sign (to confirm there is no fraud involved). If the reason appears to be valid, the agent should sign a simple affidavit stating that the agent has good knowledge and belief that the principal is alive and has not yet revoked the POA. The affidavit should include a copy of the POA and should be kept on

file. It does not need to be recorded on the land records. Upon request, a Stewart underwriter can provide a sample affidavit.

This is just a brief overview of powers of attorney in Connecticut. There are issues that occasionally arise beyond the scope of this summary (i.e., how should agent's name be shown in the introductory paragraph and signature block, what if the POA was executed outside of the United States, etc.). Also, the use of a power of attorney may be a red flag for a fraudulent transaction. (See, Stewart Bulletin: SLS2012004, which can be viewed here: [Reducing Fraud and Forgeries in the Execution of Documents](#))

If you have any questions about the use of a Power of Attorney in any of the New England States, please contact your state underwriting counsel.



The Vermont Uniform Power of Attorney Act

This month, the Vermont House of Representatives passed H. 227, the Vermont Uniform Power of Attorney Act. Once the bill clears the Senate, which is anticipated, 14 V.S.A., Chapter 123 will be repealed and replaced with the Uniform Act, which will become effective on July 1st of this year.

With respect to real estate transactions, some provisions routinely relied on under the former Power of Attorney statute will remain, however there are some noteworthy changes. Below are a few provisions to be aware of, as the Act is currently drafted:

1. A witness will no longer be required to properly execute a Power of Attorney (hereafter "POA"). Only a Notary Public will be required for proper acknowledgment. 14 V.S.A § 4005.
2. Reciprocity will be afforded for POA's validly executed in other states. 14. V.S.A. §4006(c).
3. Photocopies or electronically transmitted copies of an original POA may be relied upon in real estate transactions. 14 V.S.A. § 4006(d).
4. When co-agents are designated to act, each co-agent may exercise his/her authority independently, unless the POA expressly provides otherwise. 14. V.S.A. § 4011.
5. An agent accepts his/her appointment under a POA by exercising his/her authority or performing duties as an agent. No statement of acceptance is required unless the POA expressly requires otherwise. 14. V.S.A § 4013.
6. Unless expressly prohibited, certain acts concerning real property will be presumed granted where the language in a POA provides a general authority. An extensive list of those acts is enumerated in 14 V.S.A. § 4034.
7. A termination of an agent's authority under the POA will not be effective as to any third party who has not received actual notice of the termination and acts in good faith under the POA, and any action taken shall bind the principal and the principal's successors in interest. 14 V.S.A. 4010(d)
8. A new statutory Short Form Power of Attorney for Real Estate Transactions is provided in the Act and is recited below. This statutory form allows a principal to elect the nature of the real estate transaction, it provides and option to permit self-

dealing by the agent, and it gives the agent automatic authority to delegate their power to a third-party. 14 V.S.A. §4052.

VERMONT SHORT FORM POWER OF ATTORNEY FOR REAL ESTATE TRANSACTIONS

This power of attorney authorizes another person (your agent) to take actions for you (the principal) in connection with a real estate transaction (sale, purchase, or mortgage). Your agent will be able to make decisions and act with respect to a specific parcel of land whether or not you are able to act for yourself.

The meaning of authority over subjects listed on this form is explained in the Vermont Uniform Power of Attorney Act, 14 V.S.A. chapter 127.

DESIGNATION OF AGENT

I/we _____ and _____ (Name(s) of Principal)

appoint the following person as my (our) agent: Name of Agent:

_____ Name of Alternate Agent:

_____ Address of Property that is the subject of
this power of attorney (Street): _____, (Municipality)

_____, Vermont. Transaction for which the power of attorney is given: ☐

Sale ☐ Purchase ☐ Refinance

GRANT OF AUTHORITY I/we grant my (our) agent and any alternate agent authority named in this power of attorney to act for me/us with respect to a real estate transaction involving the property with the address stated above, including, but not limited to, the powers described in 14 V.S.A. § 4034(2), (3), and (4) as provided in the Vermont Uniform Power of Attorney Act, 14 V.S.A. chapter 127.

POWER TO DELEGATE Each agent appointed in this power of attorney may delegate the authority to act to another person. Any delegation shall be in writing and executed in the same manner as this power of attorney.

TERM This power of attorney commences when fully executed and continues until the real estate transaction for which it was given is complete.

SELF DEALING ☐ If this box is checked, the agent named in this power of attorney may convey the subject real estate to the agent, individually, in trust, or to one or more persons as co-tenants with the agent.

CHOICE OF LAW This power of attorney and the effect hereof shall be determined by the application of Vermont law and the Vermont Uniform Power of Attorney Act.

SIGNATURE AND ACKNOWLEDGMENT

_____ Your Name Printed

_____ Your Address

_____ Your Telephone Number

_____ State of _____

County of _____ This document was acknowledged before me on
_____ (Date) by _____. (Name of Principal)

(Seal, if any) Signature of Notary

My commission expires: _____

A Vermont Bulletin will be issued with respect to these changes once the Act becomes effective. If a Power of Attorney is being issued in connection with a real estate transaction that Stewart is insuring, compliance with the following will be required:

1. After July 1, 2023, the Statutory Short Form for Real Estate Transactions must be used if the POA is executed in Vermont; If the POA was not executed in VT, compliance with the drafting and execution requirements in the state in which the POA was executed must be established; and
2. The POA must be complete, validly executed and acknowledged, and in compliance with the legislative mandates of the jurisdiction in which the POA was issued; and
3. The POA must authorize the act performed by the agent; and
4. The POA must be used within the term limits proscribed, if any; and
5. Stewart's Policy Issuing Agent must obtain confirmation that no termination or revocation has been recorded in the Land Records in the municipality in which the insured property is located; and
6. Stewart's Policy Issuing Agent must obtain confirmation by the agent that he/she has not received notice that the POA has been revoked or terminated; and
7. The POA, or a photocopy thereof, must be recorded in the Land Records in the municipality in which the insured property is located; and
8. If the agent has delegated their authority to act to a third-party, the delegation must be in writing, properly executed and acknowledged, and be recorded in the land records in the municipality in which the insured property is located; and
9. Where there is self-dealing, authority must be expressly provided in the POA.

As also mentioned in the Connecticut section of this Midweek Update, other important considerations must be made when evaluating the use of a POA in a real estate transaction as use of a POA results in increased risk to the Company. For instance, it is important to consider why the POA is being used and whether the principal could execute the transaction him/herself. Are there any circumstances, evidence or information making it necessary to raise any questions as to the bona fide condition of the transaction or the good faith of the parties? Are there any indications that that the POA might be a forgery? Vigilance and prudent evaluation of the POA and circumstances surrounding its use will go a long way toward mitigating any increased risks associated with the use of POAs.



Upcoming Policy Preparation Webinar – There's still time to register

Stewart is pleased to invite you to register for our second March webinar presented by our New England Underwriting Team. 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: 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.



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