



New England Regional Midweek Update
4/10/2024

Dear Stewart Partners,

We hope you are enjoying April so far. Even though it has produced the customary showers and Tax Day is right around the corner, the spring season is still a beautiful time of year in New England. In this week's update, we are providing you with information on the proposed National Association of Realtors® ("NAR") Settlement Agreement as well as information on the resources of Rhode Island's Title Practices and Practice Forms available to all members of the RI Bar Association. We also want to remind you of a webinar happening this morning for our MA agents. Stewart's Massachusetts State Underwriting Counsel, Tracie Kester, Esq., will be discussing Deeds and Acknowledgements, so we hope you will be able to join her 30-minute webinar at 11:00 a.m. today.

Of general interest, ALTA recently adopted new endorsements, and revised and made some technical corrections to certain forms and endorsements. For states in New England, other than Massachusetts, the forms will be filed as required under the states' rules and regulations, and state specific bulletins will be issued once the forms have been accepted for filing; for details see below. Lastly, we wanted to share with our agents information on an upcoming golf event that will raise funds for Habitat for Humanity; for details read more below.



NAR Proposed Settlement of Class Action Lawsuit By: Rhonda Duddy, Esq., Massachusetts and New Hampshire Underwriting Counsel

The recently proposed NAR settlement comes after several years of litigation. The plaintiffs in the lawsuits are home sellers alleging that NAR and other organizations participated in a conspiracy to raise, fix, maintain, or stabilize real estate commissions in violation of Section 1 of the Sherman Act and corresponding state law.

In 2023 the jury awarded the plaintiffs \$1.8 billion. Although NAR denies the allegations, they announced on March 15, 2024 that they wished to settle the matter rather than move forward with an appeal. Defendants Keller Williams, RE/MAX and Anywhere Real Estate settled earlier this year. The sole remaining defendant is Home Services of America.

The total monetary settlement amount that NAR has proposed is \$418 million, broken down as follows:

Within 30 days following the filing of the first motion for preliminary approval of the Settlement Agreement, NAR will deposit \$5 million into escrow; within 90 days following final approval of the Settlement Agreement, NAR will deposit \$197 million into escrow; no later than 1 year after the initial \$197 million payment, NAR will deposit \$72 million in principal, and no later than 2 years after the initial \$197 million NAR will deposit another \$72 million in principal. No later than 3 years after the initial \$197 million payment, NAR will deposit into escrow the remaining principal, along with interest on each of the installment payments. The obligation to make these installments will be evidenced by a promissory note.

The practice changes NAR has proposed to implement are primarily outlined in Paragraph 58 of the 108-page Settlement Agreement and include the following:

- Eliminate and prohibit any requirement by NAR, any Realtor® MLS, or Member Boards that listing brokers or sellers must make offers of compensation to buyer brokers or other buyer representatives and eliminate and prohibit any requirement that such offers, if made, must be blanket, unconditional, or unilateral;
- Prohibit Realtor® MLS participants, subscribers, other real estate brokers, other real estate agents, and their sellers from (a) making offers of compensation on the MLS to buyer brokers or other buyer representatives or disclosing on the MLS listing broker compensation or total broker compensation;
- Require each Realtor® MLS to eliminate all broker compensation fields on the MLS and prohibit the sharing of the offers of compensation to buyer brokers or other buyer representatives;
- Eliminate and prohibit any requirements conditioning participation or membership in a Realtor® MLS on offering or accepting offers of compensation to buyer brokers or other buyer representatives;
- Agree not to create, facilitate, or support any non-MLS mechanism for listing brokers or sellers to make offers of compensation to buyer brokers or other buyer representatives;
- Require that all Realtor® MLS participants working with a buyer enter into a written agreement (before the buyer tours any home) with the following provisions:
 1. The agreement must specify and conspicuously disclose the amount or rate of compensation it will receive or how this amount will be determined;
 2. The amount of compensation reflected must be objectively ascertainable and may not be open-ended; and
 3. Such a Realtor® or participant may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer.
- Prohibit Realtors® and Realtor® MLS participants from representing to a client or customer that their brokerage services are free or available at no cost to their clients, unless they will receive no financial compensation from any source for those services;
- Require Realtors® and Realtor® MLS participants acting for sellers to conspicuously disclose to sellers and obtain seller approval for any payment or offer of payment that the listing broker or seller will make to another broker, agent, or other representative acting for buyers (such disclosure must be in writing, provided in advance of any

payment or agreement to pay to another broker acting for buyers and specify the amount or rate of any such payment);

- Require Realtors® and Realtor® MLS participants to disclose to prospective sellers and buyers in conspicuous language that broker commissions are not set by law and are fully negotiable;
- Require that Realtors® and Realtor® MLS participants and subscribers must not filter out or restrict MLS listings communicated to their customers or clients based on the existence or level of compensation offered to the buyer broker or other buyer representative assisting the buyer;
- Rescind or modify any existing rules that are inconsistent with the practice changes reflected in the Settlement Agreement; and
- Develop educational materials that reflect and are consistent with each provision in these practice changes and eliminate educational materials, if any, that are contrary to it.

The Agreement also provides that the practice changes shall not prevent offers of compensation to buyer brokers or other buyer representatives off of the multiple listing service, nor will it prevent sellers from offering buyer concessions on a Realtor® MLS (e.g., buyer closing costs) so long as such concessions are not limited to or conditioned on the retention of or payment to a cooperating broker, buyer broker, or other buyer representative.

The Settlement Agreement further states that these practice changes will terminate 7 years after the class notice date.

The Settlement Agreement is still pending the federal court's approval. We will continue to keep you updated as more information becomes available. If the Settlement Agreement is approved, the changes will go into effect within 60 days.



Rhode Island resources: Title Standards, Practice Standards and Practice Forms By: Eileen C. O'Shaughnessy, Esq., Rhode Island Underwriting Counsel

We may all be familiar with our Rhode Island Title Standards, but perhaps not as familiar with the attendant Practice Standards and Practice Forms. Since all RI attorneys must be members of the RI Bar Association, we all have easy access to all three on our Bar Association website. As part of the membership, we can access FastCase which includes a link to all these documents.

The Practice Standards flesh out some practical details of the Title Standards. For instance, included in the Practice Standards is information on the necessary documents to obtain when buyers or sellers are either LLCs or Corporations, and the standards concisely set forth the requirements for facilitating such transactions.

Additional Practice Standards include information on foreclosures, partnerships, trusts, estates and bankruptcy among other topics.

The Practice Forms provide templates for many important transactional and other documents. They include a sample Memorandum of Trust pursuant to our statute, which is a frequently required document. The Title Standard Committee's official Foreclosure

Checklist can be found in the Practice Forms and it is invaluable when reviewing a foreclosure in the chain of title.

A conveyancer will find both the Practice Standards and Forms extremely helpful in their practice. Of course, you can always reach out to your underwriter with any questions on these resources.



Stewart's Massachusetts Underwriters Talk Title – 4/10/2024

Join Massachusetts State Underwriting Counsel Tracie Kester, Esq. for our second installment of Stewart Underwriters Talk Title. April's topic is **Deeds and Acknowledgments**. Tracie will lead a concise 30-minute session covering the specific requirements for sufficient acknowledgments on a Massachusetts Deed or Mortgage and why it's important in the title context. The session will also discuss signing authority for entities and some fraud and forgery risks to watch out for.

This complimentary webinar for Stewart's agents will take place on **April 10, 2024 from 11:00 AM – 11:30 AM**.

To register, follow this link: [Stewart's Massachusetts Underwriters Talk Title – 4/10/2024](#)



Forms Update

ALTA has recently adopted a new form relative to collateral assignments and also made certain revisions and technical corrections to previously filed forms. In Massachusetts, these forms are available for use as of April 2, 2024. Stewart has issued a bulletin that includes brief explanations and contains a link to the forms. Follow the below link to view the bulletin:

<https://www.virtualunderwriter.com/en/bulletins/2024-4/mu2024001.html>



Stewart Supports Our Community

The Massachusetts office of Stewart Title Guaranty Company is a sponsor of the Give Moor Charity Tournament at the Blue Hill Country Club in Canton, Massachusetts. The May 13, 2024 event will raise money for local families in need of housing and will benefit the South Shore Habitat for Humanity. For more information about this event follow this link:

<https://event25299.perfectgolfevent.com/>



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