



Dear Stewart Partners,

Now that Tax Day has come and gone, we hope some of you are now looking forward to perhaps a spring vacation or if you are a runner, you are looking forward to the upcoming Boston Marathon. Good luck to all the runners - we'll keep our fingers crossed for good weather for you!

In this week's Mid-Week Update, we will be discussing Endorsements included in the 2021 Expanded Coverage Residential Loan Policy as well as a discussion on the topic of Lis Pendens affecting Massachusetts land. We are also providing a link to a recent press release from the FBI regarding deed scams in the New England states – the monetary losses are jaw-dropping.

We hope this information proves useful to you and, as always, we are happy to answer any questions you may have on these topics as well as any other underwriting questions you may have for us.



**Endorsements Included in the 2021 ALTA Expanded Coverage Residential Loan Policy of Title Insurance** By: Tracie M. Kester, Associate Senior Underwriting Counsel, Massachusetts

Many of you are familiar with the “expanded” or “enhanced” versions of the owner’s and loan policies of title insurance. They can only be issued on Land which is improved with a 1-4 family residence (including a residential condominium unit). Like the prior versions of the Expanded Coverage Loan Policy, the 2021 Loan Policy includes certain endorsements by reference in the policy jacket. Specifically, paragraph 28 under the “Covered Risks” section states that:

28. Unless stated to the contrary in Schedule B, the Company incorporates the following endorsements, as adopted by the American Land Title Association (ALTA) and authorized for use in the State as of the Date of Policy, into this policy by reference as if these endorsements are attached to this policy:

- ALTA 4.1 Condominium – Current Assessments, if a condominium unit is referred to in the description of the Land;
- ALTA 5.1 Planned Unit Development – Current Assessments;
- ALTA 6 Variable Rate Mortgage;
- ALTA 6.2 Variable Rate Mortgage – Negative Amortization;

- ALTA 8.1 Environmental Protection Lien, subject to the State statutes, if any, identified in Schedule B specifically for this endorsement;
- ALTA 9.6.1 Private Rights- Current Assessments – Loan Policy; and
- ALTA 9.10 Restrictions, Encroachments, Minerals – Current Violations – Loan Policy.

The incorporation by reference language in the policy jacket means that you do not have to separately attach these endorsements to the policy. It also means that you will not see all of these endorsements listed at the bottom of Schedule A of the policy, like you would on the “standard” ALTA Loan Policy of Title Insurance.

You are likely familiar with most of the endorsements that are included by reference in the jacket of the Enhanced Loan Policy; however, a brief summary of the coverage afforded by each of the endorsements is as follows:

ALTA 4.1 Condominium – Current Assessments: This endorsement insures against loss or damage based upon the failure of the unit to be part of a condominium, the failure of the documents creating the condo to comply with statutes such that title to the unit is affected, present violations of any restrictive covenants that pertain to use of the unit, forfeiture of title based upon a violation of restrictive covenants, obligation to remove encroachments existing at Date of Policy, or failure of the unit to be entitled to be assessed for real property taxes as a separate parcel. It is important that the “Current Assessments” version be issued for most of the New England states, since condominiums in Massachusetts, Connecticut, Vermont, New Hampshire and Rhode Island all have a so-called “super lien” for unpaid condo common area charges that has priority over a mortgage. As such, the endorsement only insures there are no past-due charges that could have priority over the mortgage, it does not address future unpaid charges or assessments.

ALTA 5.1 – Planned Unit Development – Current Assessments: This endorsement is similar to the condominium endorsement but deals with planned unit developments (PUDs). Similar to a condo, a PUD consists of a fee simple interest in a residence, together with appurtenant easements in common areas. Like the ALTA 4.1 condominium endorsement, the ALTA 5.1 endorsement insures against loss or damage based upon violations of restrictive covenants, the forfeiture of title by reason of any provision in restrictive covenants, the forced removal of structures other than boundary walls or fences because of an encroachment, or the failure of title based upon a prior right of first refusal. Finally, like the ALTA 4.1, the ALTA 5.1 only deals with current assessments, it does not insure that the mortgage will have priority over any future charges or assessments

ALTA 6 – Variable Rate Mortgage and ALTA 6.2 – Variable Rate Mortgage – Negative Amortization: These endorsements provide coverage to the lender for the invalidity, unenforceability, or loss of priority of the mortgage because of provisions for changes in the rate of interest. The ALTA 6.2 endorsement is commonly requested with a so-called reverse mortgage, also known as a home equity conversion mortgage (HECM).

ALTA 8.1 – Environmental Protection Lien: This endorsement insures the lender that there is no environmental protection lien filed in the public records which would have priority over the insured mortgage, unless the lien is shown as an exception in Schedule B of the policy. It also insures that there are no statutes in the state in which the land is located which would give such liens filed after the Date of Policy priority over the mortgage, unless that statute is identified in Schedule B. You should see language on Schedule B, Part 1 of the enhanced loan policy as follows: “The following state statutes, reference to which are made part of the ALTA 8.1 Environmental Protection Lien endorsement incorporated into this

policy:" and the word "none" [for Connecticut, Massachusetts, and Rhode Island properties] or "38 M.R.S.A. ss. 1316-E, 1370 and 1371" for Maine property; "NH RSA ch. 147-B" for New Hampshire property; or "Title 10 VSA" for Vermont property.

ALTA 9.6.1 – Private Rights – Current Assessments – Loan Policy: This is one of the ten "ALTA 9" series of endorsements. The Private Rights – Current Assessments endorsement insures the lender against loss or damage based upon the enforcement of a "Private Right" or covenant which invalidates or renders unenforceable the lien of the mortgage. "Private right" is defined in the endorsement as a private charge or assessment, an option to purchase, a right of first refusal, or a right of prior approval of a future purchaser or occupant. Like the Condo or PUD endorsements, this endorsement also provides coverage for private charges or assessments that are due and payable at Date of Policy, but not coverage for future assessments.

ALTA 9.10 – Restrictions, Encroachments, Minerals – Current Violations – Loan Policy: This endorsement is very similar to the ALTA 9 endorsement, which is sometimes referred to as the "comprehensive endorsement." This endorsement provides coverage to the lender for covenant violations, recorded notices of violation of an environmental protection covenant, enforced removal of an encroachment into a building setback on a recorded plan, encroachment of an improvement onto adjoining land or an easement, encroachment of an improvement from adjoining land onto the land being insured, damage to an improvement resulting from encroachment onto an easement, and damage to an existing improvement resulting from the future exercise of mineral rights. You can see from the breadth of coverage why it's called the comprehensive endorsement. The only difference between the ALTA 9 Restrictions, Encroachments, Minerals and the ALTA 9.10 Current Violations endorsement is that the ALTA 9.10 provides coverage only for covenant violations at Date of Policy, not future violations.

While the seven included endorsements provide the coverages most often requested by lenders in the residential setting, it is important to note that one off the most commonly requested endorsements – the Secondary Mortgage Market Endorsements – is not included in the expanded policy jacket. Therefore, you may have to attach the "STG Secondary Mortgage Market Endorsement" to the expanded loan policy prior to sending it to the lender. In Massachusetts, the Schedule A for the Expanded Loan Policy should have the option for a "check the box" for the STG Secondary Mortgage Market Endorsement 1 – if your TPS system does not have this version of the form, please reach out to your Stewart Agency Services Representative or Underwriter.

The "Expanded Coverage Residential Loan Policy of Title Insurance – Current Assessments" can be issued in all six of the New England States; however, please check with local underwriting counsel as to the specific requirements of each state, such as whether a plot plan may be required. There is another version of the Expanded Coverage Residential Loan Policy entitled "Assessments Priority" – this version of the Expanded Loan Policy can only be issued for property located in Maine, and only if the mortgage to be insured is a first priority mortgage; it should not be issued in any of the other states.



**Lis Pendens involving Massachusetts Real Estate** By: Rhonda L. Duddy, Esq., Massachusetts and New Hampshire Underwriting Counsel

The term lis pendens is a Latin term meaning "action pending." A lis pendens is a formal notice recorded at the appropriate registry of deeds when title to real property is at issue in a lawsuit. It serves as a warning that the property's title may be affected by the outcome of litigation. A lis pendens is not a lien, but rather a notice of a possible interest in real property. The purpose of the notice is to put third parties on notice of the court case involving the real estate. Notice is achieved by recording a "memorandum of lis pendens" at the registry of deeds for the county where the property is located. The most common cases that trigger a lis pendens include real estate contract disputes, easement or boundary line disputes, adverse possession, quiet title actions, or divorce proceedings involving real estate.

In Massachusetts, the lis pendens procedure is set forth in MGL c. 184, §15. Per the statute, a memorandum of lis pendens cannot be recorded unless it bears a finding by a judge of the court in which the action is pending that the suit constitutes a claim of a right to title to real property or the use and occupation of real property. The statute further sets forth certain requirements as to what information must be contained in the memorandum. This includes the names of the parties to the proceeding, the court in which it is pending, the date of the complaint, the town where the property is located, and a description of the property. The memorandum of lis pendens must also be accompanied by an affidavit stating that the plaintiff or plaintiff's attorney has, by certified mail, served notice of the court's allowance of the motion for judicial endorsement on all parties to the action. This affidavit must accompany the endorsed memorandum of lis pendens in order to be accepted at the registry of deeds for recording.

In accordance with REBA Title Standard 29, a memorandum of lis pendens may be dissolved by recording with the registry of deeds where the memorandum is recorded either of the following:

1. A certificate of the clerk of court where the action was entered or the judgment was entered stating that (a) the action has gone to final judgment in favor of the defendant; or (b) the action has been discontinued, dismissed or finally disposed of as to the land in question; or
2. A Notice of Voluntary Dissolution duly executed and acknowledged (a) by the party who executed the memorandum; or (b) by that party's successor in interest; or (c) by an attorney of record for either of the parties.

With respect to registered land, a memorandum of lis pendens is carried forward on the certificate of title as they run with the land. Once dissolved, the memorandum of lis pendens will not be carried forward to subsequent certificates. Land Court Guideline 34 provides the following methods of dissolving a lis pendens:

1. The filing of a notice of voluntary dissolution duly executed by the party who executed (or on whose behalf was executed) the memorandum of lis pendens, by that party's successor in interest, or by an attorney of record for either of those parties; or
2. The filing of an attested copy of an allowed special motion to dismiss, or of any order or judgment dismissing, the underlying action, or of an order dissolving the memorandum of lis pendens, in each such case without a timely appeal having been filed (or, if an appeal had been filed, by final resolution of all appeals upholding the

allowance, order or judgment). A clerk's certificate from the trial court will be necessary to establish the absence of a timely appeal or the favorable resolution of any appeal, and should be registered along with the attested copy of the allowance, order, or judgment; or

3. The filing of a clerk's certificate from the court in which the action is pending that the action has been fully and finally concluded by notice of voluntary dismissal, stipulation of dismissal or agreement for judgment.

If you are dealing with a property that has a lis pendens recorded naming the current owner, please contact your underwriter to confirm the requirements to close the transaction and issue policies without exception for the pending litigation. If you find a lis pendens in your back chain of title without a corresponding dissolution, please reach out to an underwriter to find out whether a clean policy may be issued or if additional documentation is required in order to insure the transaction.



### **FBI'S Boston Office Warns of Deed Fraud**

Readers of our mid-week update are well acquainted with the issue of deed fraud; in case you missed it, last week's update featured an article by Eileen O'Shaughnessy, Stewart's Rhode Island Underwriting Counsel, about this problem.

The Boston office of the Federal Bureau of Investigation (FBI) issued a warning on April 1, 2025 about deed fraud – and the numbers it contained are no joke. Losses in the states of Maine, Massachusetts, New Hampshire, and Rhode Island during the period of 2019 through 2023 from real estate fraud exceeded 61 Million Dollars. This includes losses through both wire fraud and deed fraud.

You can read the release here: [FBI Warns of Deed Fraud](#)

The release also includes some tips for both owners and realtors on how to avoid getting scammed, and so please share with your clients and colleagues.



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