



Dear Stewart Partners,

This Mid-Week Update discusses SNDAs and estoppel certificates, both of which are common documents that are often delivered in commercial transactions, as well as some legislative updates in Vermont related to Powers of Attorney and real property held in Trust.

We've also included information for some upcoming educational opportunities brought to you by your local Stewart underwriting team!



Estoppel Certificates and SNDAs (Subordination, Non-Disturbance, and Attornment Agreements) By: Katherine F. Fletcher, Esq., Connecticut State Counsel and Associate Senior Underwriting Counsel

If you are representing a lender, borrower/buyer or tenant, and the underlying property is commercial, there is a good chance you or your client may need to review estoppel certificates and/or SNDAs. Estoppel certificates and SNDAs are an important part of the relationship between a property owner, a tenant and a lender, and can protect all parties involved in a transaction. Whereas SNDAs are entered into with respect to a landlord's financing, estoppel certificates are used for various real estate transactions, including acquisitions and financings.

Estoppel Certificates

A tenant estoppel certificate is a certification from a tenant to a landlord and/or a lender that sets forth the material terms and conditions of the lease. Such terms typically include lease dates, rental rates, security deposit, expenses that each party is responsible for, square footage, extension rights, options to lease additional space or purchase the underlying property, and an assurance that there are no landlord defaults or other unsatisfied landlord obligations. Since there is no direct relationship between a tenant and their landlord's lender, a tenant estoppel offers protection to a lender by providing confirmation regarding the status of the lease and landlord's obligations thereunder. Given that the landlord's ability to service the debt is usually directly linked to the flow of rental income, lenders place significant reliance on tenant estoppel certificates. Similarly, purchasers of commercial rental property also rely on the representations made in tenant estoppel certificates in determining the income-based value of such properties.

Tenant estoppel certificates are the most common type of estoppel certificate used in real estate transactions. However, there are other instances where an estoppel certificate may be useful. For example, if a purchaser is buying a commercial condominium unit or units, the purchaser will want an estoppel certificate from the condominium association which sets forth the status of association fees and assessments, and whether the unit owner or owners are in good standing with the association and its by-laws, among other things. These types of certificates are critical in jurisdictions where there is no statutory certificate relating to condominium fees and dues. A purchaser of commercial property may also consider requesting an estoppel certificate from the declarant under a reciprocal easement agreement or other declaration that imposes covenants and restrictions on the property and owner. In these cases, an estoppel certificate will confirm whether the seller is in compliance with its obligations under such agreements. For a residential transaction, typically the estoppel concept is addressed by a statutorily mandated resale certificate provided by the association prior to closing. Sometimes the roles are reversed and a tenant requests that a landlord provide a landlord estoppel certificate in which the landlord provides similar information that is found in a tenant estoppel certificate, except it is tailored to provide a status of the tenant's obligations under its lease. Landlord estoppel certificates are commonly requested if the tenant is financing its leasehold interest.

SNDA's

The primary purpose of a subordination, non-disturbance and attornment agreement ("SNDA") is to protect the interests of both the lender and the tenant. The rights of a tenant under an existing lease with a recorded notice of lease are paramount to the rights of a lender whose interests are created after the lease. Generally, lenders will not accept a title insurance policy that contains an exception for the rights of commercial tenants under an existing lease and will require that such rights be made subordinate to the insured mortgage. For the lender, the SNDA provides assurance that they can foreclose the property without being hindered by the tenant's rights under the lease. Simultaneously, the tenant gains protection by securing its rights to continue to occupy the premises, undisturbed, under the terms of its lease, even if the landlord defaults on the mortgage and the lender eventually takes title to the property via foreclosure.

The core elements of an SNDA are as follows:

1. Subordination – this clause establishes the priority of liens on the property. It means that the tenant agrees that its leasehold interest in the property will be subordinate to the mortgage lender's interest.
2. Non-Disturbance – the non-disturbance provision guarantees that as long as the tenant fulfills its obligations under the lease, the lender will not disturb the tenant's possession and use of the property. This protects the tenant from being evicted or having its rights infringed upon due to a mortgage default by the landlord and subsequent foreclosure by the lender.
3. Attornment – the attornment clause requires the tenant to recognize and acknowledge the lender as the new landlord in the event of foreclosure. This ensures that the lender can step into the landlord's shoes and enforce the lease terms with the tenant, maintaining the rental income stream.
4. Notice and Cure Provisions – most SNDA's also require the tenant to give the lender written notice of any lease default by the landlord that would entitle the tenant to declare the lease terminated. Such provisions also typically provide the lender the

right, but not the obligation, to cure that default as a means of preserving the tenancy and stream of income therefrom.

SNDA's are typically recorded if a notice or memo of tenant's lease is recorded on the land records. Recording the SNDA in the public records provides notice to outside parties and establishes the priority of interests, protects the tenant's leasehold rights, and provides clarity regarding the lender's rights in case of foreclosure. While recording an SNDA is necessary in some instances, recording is not required for an SNDA to be effective. Generally, if a lease memorandum and a properly drafted SNDA are recorded, the lease memorandum, "as affected by" the SNDA, will be included on the final loan policy as a subordinate matter on Schedule B-II. Please contact your local underwriting counsel for more specific circumstances under which recording an SNDA is necessary or advisable.

Some leases contain "self-subordinating" language which states that the lease is subordinate to any existing or future mortgage which may encumber the landlord's fee interest in underlying property. It is important to note that even though language may appear at a first glance to be sufficient to affect a subordination, sometimes the language can be a bit convoluted and in need of further analysis. Even if the language is sufficient, some lenders may still require an SNDA based on other provisions in the lease. In any event, feel free to contact your Stewart underwriter for assistance in determining when an SNDA is needed and/or whether it contains the necessary operative language to result in a subordination, when being asked to issue policies insuring the transaction.



Legislation to Watch in Vermont By: Jill Spinelli Quong, Esq.,
Vermont State Counsel and Associate Senior Underwriting Counsel

The Vermont General Assembly is considering legislation for this session that may have an impact on real estate transactions. Each of the Bills described below have passed the Senate and they appear to have support to make it through the House this session and enacted into law.

15 year limitations period for unrecorded powers of attorney - Senate Bill S. 109, Section 16, contains a proposed amendment to 27 V.S.A §348, relating to Powers of Attorney used for real estate conveyances. The amendment provides that a deed, mortgage, lease or other instrument that has been of record for at least 15 years, is valid even where no power of attorney is of record, unless an action challenging the instrument's validity is commenced within the 15 year period and is evidenced by a recorded complaint. If enacted into law, this would eliminate this relatively common technical violation that can often delay real estate transactions. A full text of the proposed bill can be found [here](#).

Tenancy by entirety creditor protections extended to property held in trust – Senate Bill S. 3 proposes to supplement 14A V.S.A. §505 to eliminate the reach of sole creditors of a spouse upon the sale of the trust's real property as though the property were held individually in a tenancy by the entirety (TBE), and not in trust. As we know, property held as TBE belongs to neither spouse, but both spouses are collectively seized of the entire property, making the interest indivisible and not severable by the actions of just one spouse. If passed, this would codify TBE protections in Vermont generally, and would expand the protections to properties held by spouses in trust. As a reminder, the protections

discussed herein specifically apply to the reach of creditors for real estate sales, not refinance transactions. Payment of the sole debt of one spouse would be still be required for refinance transactions. The full text of the proposed bill can be found [here](#).

We will be following the progress of these two Bills, as well as others, including Senate Bill S.73, proposing a requirement that an owner must provide notice of adverse possession six months before the expiration of the 15-year period, and House Bill H.106 proposing to repeal the requirement that sellers of real property must disclose whether the property is located in a FEMA mapped flood hazard area. Should any of this proposed legislation be passed by both chambers and signed into law, a Stewart Bulletin will be issued with further guidance.



Vermont Producer Licensing Renewals were due 3/31/25

As a reminder, the Vermont Department of Financial Regulation should have sent out renewal notices for resident and non-resident individual producer licenses at the beginning of 2025. The renewal period ended on March 31, 2025, so if you did not renew, please be sure to view the application/renewal page [here](#) to avoid any lapse in your license status.



Educational Opportunities

Our Massachusetts Underwriters Talk Title Series – Upcoming April Webinar

Our April installment is right around the corner on April 9th and will focus on Orders of Condition. Rhonda Duddy, Massachusetts and New Hampshire Underwriting Counsel, will lead the presentation. Attendees will gain a comprehensive understanding of these orders and their impact on title insurance. To register for this or any of our upcoming Talk Title webinars, follow this link: [MA Underwriters Talk Title - Registration Link](#)

Need NH CLE Credits?

We recently hosted two live webinars for New Hampshire practitioners. If you missed either presentation, they are both available in recorded format through Stewart's exclusive agency education web portal, Stewart Academy. To access follow this link: [Stewart Academy](#)

MCLE Program on April 7, 2025 – Marking Up Title Commitments, Eliminating Exceptions and Getting Endorsements

Join Stewart's Jutta Deeney and Tracie Kester, along with Amanda Eckhoff from Robinson + Cole, for a Massachusetts Continuing Legal Education webinar on April 7, 2025 from 1 PM to 4 PM. The panelists will discuss the importance of reviewing a title commitment, negotiating the removal of exceptions, and requesting additional coverage by way of

endorsements. This MCLE does offer continuing legal education credit in various states for this program. For more information about credits or to register, go to MCLE's website here: [MCLE | New England: CLE Programs, Webcasts and Publications - Registration Link](#)



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