



Dear Stewart Partners,

Thank you for joining us again this week. We are grateful for your partnership with Stewart and are confident this update will provide valuable information for your practice. In this week's update, we share some important cautions if you are closing hard money transactions, are introducing a new Massachusetts form of Notice of Availability of Title Insurance due to the recent Massachusetts Board of Bar Overseers Article entitled "The Cost of Doing Business (With a Client)," and have updates on some recent real estate legislation in Maine.

Also, in case you missed the Special Alert distributed to New Hampshire agents yesterday we have included a link. The alert was issued because we received information that the property might be targeted as part of a vacant land sale fraud. This type of fraud is gaining prevalence across the country and presents a very real risk. Read Stewart's general advisory bulletin on identifying and preventing this kind of fraud by following this link: <https://www.virtualunderwriter.com/en/bulletins/2022-4/sls2022004.html>

Lastly, we are pleased to announce that Stewart is a sponsor of the REBA Women's Networking Group annual fundraiser for the Women's Lunch Place in Boston. This event will take place on June 8th at the **Women's Lunch Place** at 67 Newbury Street in Boston from 6:00pm – 8:00 pm. Many of us from our Massachusetts office will be at the event. For details about the event and information on purchasing tickets see below. We hope to see you there.



**Update: Title Insurance as a Law Related Service and Business Transaction – Massachusetts Rule of Professional Conduct 1.8 – Disclosure and Consent**

In our March 15, 2023 Midweek Update, we included information on an article by Assistant Bar Counsel Robert M. Daniszewski entitled "The Cost of Doing Business (With a Client)." The article is available from the BBO website via this link [The Cost of Doing Business \(With a Client\)](#). In order to assist you, our agents, in making such a disclosure, Stewart has amended its Notice of Availability of Title Insurance Form which can be included with your introductory letter or your Mass. R. Prof. C. Rule 1.5 fee disclosure. Link to Rule 1.5 here: [Rules of Professional Conduct Rule 1.5: Fees | Mass.gov](#). You may access the form here: [MA Notice of Availability of Owners Title Insurance \(virtualunderwriter.com\)](#). All indicators are that the preferred practice is that the required disclosure be provided to borrowers as early as possible in closing process.

As a reminder, in the BBO article Daniszewski speaks to the conflict of competing interests that can arise when an attorney enters a business or commercial transaction with a client. The sale of title insurance has been deemed such a transaction. As such, Mass. R. Prof. C. Rule 1.8(a) prohibits an attorney from entering into a business transaction with a client, unless:

1. The transaction and terms are objectively fair and reasonable and are fully disclosed in a writing that can be reasonably understood;
2. The client is advised in writing to seek the advice of independent counsel in regard to the transaction; and
3. The client gives written consent to the terms of the transaction, having been duly informed of the lawyer's role in it, including whether the lawyer is purporting to represent the client in the transaction itself.

Link to Rule 1.8 here: [Rules of Professional Conduct Rule 1.8: Conflict of interest: Current clients: Specific rules | Mass.gov](#). Based on this rule, the article states that

"Massachusetts conveyancers must (a) disclose to the buyer the cost of the policy; (b) advise the clients of the desirability of seeking independent legal advice as to the purchase of the policy; (c) clearly inform the clients of the lawyer's role in the sale of the policy (which presumably includes disclosure of the lawyer's share of the policy commission); and (d) secure the clients' written consent to the terms of the transaction." It is important to note that Rule 1.8 requires more than simply the disclosure of title insurance premium, and the Availability of Owner's Title Insurance form is not designed to satisfy the obligations of an attorney retained by a client to also provide law related services, which includes the sale of title insurance.

The BBO is available to help with matters of compliance, and otherwise, and offers their assistance through the BBO Ethical Helpline. The Helpline is available Mondays, Wednesdays, and Fridays from 2:00 to 4:00 p.m. The phone number is 617-728-8750.



### **New England: Underwriting Bulletin: MU2021001 – UNDERWRITING Non-Institutional / Hard Money / Private Lender Transactions**

Given the current financial climate, we are seeing an increase in the number of closings on hard money loans. Investors are busy buying up deals and relying on hard money loans to finance their short-term ownership. This article addresses some of the elevated risks associated with hard money loans as further disclosed in Stewart's underwriting bulletin MU2021001. To view the bulletin, follow this link: [MU2021001 \(virtualunderwriter.com\)](#).

When insuring hard money transactions, there are a number of risk factors to be aware of, especially relating to fraud schemes. If any of the following red flags are present in your transaction, do the necessary due diligence to confirm there is no actual fraud taking place in your transaction. In fact, even if your transaction is not hard money, it's always good to be aware of these pitfalls. Here are some red flags to look for:

- Borrower/buyer is located out of the state (or country);
- Borrower/buyer requests to sign documents using a power of attorney;
- There is no direct contact with the sellers or the borrower/buyer;

- The property is owned by an entity and Secretary of State records disclose recent changes in management and/or authorized signatories;
- The Seller(s) is an heir/devisee of the title owner;
- The chain of title discloses recent nominal consideration transfers;
- The chain of title discloses recent transfers without institutional financing;
- A large amount of cash is to be disbursed to borrower or seller;
- There is pressure for a rush closing;
- The property is owned “free and clear;”
- The chain of title discloses mortgages having been discharged without associated refinancing;
- The property is being sold without brokers or without listing on a multiple listing service (MLS).

To avoid falling prey to the risks associated with the above red flags, it’s important to follow these steps of due diligence:

- Disburse proceeds ONLY to the borrower/seller, and not to a third party, unless proceeds are:
  1. Used to pay off existing encumbrances against the property;
  2. Used to pay invoices of contractors or suppliers for work performed on the property; or
  3. Paid to another closing attorney or title company in connection with the seller’s or borrower’s purchase of another property, provided you obtain sufficient evidence that the borrower or seller is indeed the actual purchaser of the other property;
- Conduct an in-person closing with buyer/borrower;
- Compare buyer’s/borrower’s signature against previously signed documents and identification, such as a driver’s license;
- Compare seller’s signatures to those shown on previously recorded documents;
- Do not accept documents signed under Power of Attorney without underwriter approval. Inquire as to why the party would like to rely on the power and take note of when it was executed;
- When seller/borrower is receiving more than \$25,000.00 in sale or loan proceeds, require two forms of identification;
- If available, run borrower(s) and seller(s) names against Lexis Nexis database to confirm validity. Also, for every transaction, be sure to check the Stewart Special Alerts Database for any alerts as to the parties or the property. The link to the database is here: [Search \(stewart.com\)](http://Search.stewart.com)

When issuing policies insuring owners obtaining a hard money loan or insuring the hard money mortgage they obtained, the basic policy, otherwise known as the standard policy, and NOT an enhanced policy, should be issued.

Finally, if your transaction involves any one of the following risks, be sure to obtain the necessary approval from an underwriter. Contact your underwriter to obtain the most recent approval request form. Hard money risks requiring underwriter approval are:

1. All or some of the loan funds will be used for construction, rehabilitation or remodeling;

2. All or some of the loan funds will be used to pay off a construction loan;
3. Property is owned “free and clear;”
4. Closing will not take place at the issuing agent’s office or is a “mail-away” closing;
5. Use of a Power of Attorney for any transaction documents;
6. 24-month chain of title discloses nominal transfers or transfers without simultaneous financing;
7. Borrower or Seller is receiving funds in excess of \$25,000.00;
8. The number of mortgagees/beneficiaries exceeds four.

As always, feel free to reach out to your underwriter if you have any questions.



## **New Maine Bill Aimed at Outlawing Exclusive Future Listing Agreements**

On March 23, 2023, Maine State Representative Arthur L. Bell introduced L.D. 1306 – “An Act to Protect Homeowners from Unfair Agreements to Exclusively List Residential Real Estate For Sale.” According to Bell, “an abusive real estate brokerage practice that has now spread to 32 states is causing serious harm to low-income homeowners.” That practice typically involves a real estate broker offering a homeowner a cash payment of “usually less than \$1,000” to enter 40-year contracts under which the owner must use the broker as listing agent if the owner sells the property during that period. In the event the owner violates the agreement, conveys an interest to a spouse, or loses the property to foreclosure, the broker would still be entitled to a 3% fee.

The bill, in its original form, renders such agreements unenforceable, prohibits their recording in the registries of deeds, and entitles aggrieved homeowners to actual damages, costs and legal fees. The bill defines such agreements as those between residential property owners and real estate brokers in which the owner agrees to

1. *List the owner's residential real estate for sale with the real estate brokerage agency or 3rd party at a future date when the owner wants to sell the residential real estate;*  
*or*
2. *Be obligated to pay a fee or commission to the real estate brokerage agency or 3rd party upon sale of the residential real estate when the real estate brokerage agency or 3rd party has not provided real estate brokerage services to the owner.*

New England Land Title Association, American Land Title Association, and AARP provided written testimony in support of the bill. The Maine Department of Professional and Financial Regulation’s Office of Professional and Occupational Regulation, which oversees the Maine Real Estate Commission, likewise supported the intent of the bill, but expressed concern that its original form would prohibit certain contracts “for which there is no public protection concern”, such as when “a seller may be unhappy with a current listing agreement and subsequently may enter into a listing agreement with another agency with a start date that commences after the expiration of the current listing or a seller may sign a listing agreement for a future date to allow time to prepare the property for sale.”

The Maine Association of Realtors, through its lobbyist Resolve Government Relations, “strongly” opposed the bill in its original form because it claimed the bill was “excessively

restrictive and prohibits legal and valid exclusive listing agreements for real estate transactions.”

On March 28, 2023, the Maine Senate referred the bill to the Committee on Innovation, Development, Economic Advancement and Business. On April 11, 2023, the Committee held a public hearing on the bill. On May 2, 2023, following a work session in which amendments to the text of the bill were discussed, the Committee voted the bill “Ought To Pass” with amendments. As of the date of this article, the Revisor’s Office has not delivered those amendments to the Committee Clerk, and they are therefore not yet public. As such, while the bill is still technically in Committee, it is likely to be released with amendments, back to the House for a vote this session.

The bill, in its original form, may be read here:

<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP0831&item=1&snum=131>.

Similar bills to outlaw this practice are pending in 25 other states.

As a reminder, Stewart issued a National Bulletin SLS2022007 relating to Right to List Contracts and Performance Mortgages. In this bulletin, underwriting guidance is provided in the event your title discloses such a contract or homeowner agreement. To view this bulletin, follow this link: [SLS2022007 \(virtualunderwriter.com\)](https://www.stewarttitle.com/bulletins/SLS2022007).



### **Maine Bill Requiring Closing Agents to Complete Homestead Exemption Forms Unlikely to Pass**

A bipartisan-sponsored bill introduced in the Maine Senate, L.D. 1386 – “An Act to Require That A Completed Form for Homestead Property Tax Exemption Be Provided to a Person Purchasing a Home” - would require closing agents to complete homestead tax exemption applications for buyers and present them to buyers for signature at closing. The bill met with criticism because of the new burden it would place on closing agents. On March 28, 2023, the Senate referred the bill to the Taxation Committee. On April 20, 2023, the Taxation Committee unanimously voted that the bill “Ought Not To Pass”. As a result, the Legislature may take no further action on the bill unless it passes a Joint Order to recall the bill by two-thirds of the members of both houses. Although the bill appears unlikely to pass, you may read it here:

<https://legislature.maine.gov/backend/App/services/getDocument.aspx?documentId=97053>



### **In Case You Missed It: Special Alert – 3 Carol Court, Laconia, NH**

Please be advised that effective immediately, issuing offices are instructed not to accept any orders or close any transactions involving 3 Carol Court, Laconia, New Hampshire.

To read the Special Alert distributed on Monday, please follow this link:  
<https://www.virtualunderwriter.com/en/bulletins/2023-5/sa2023101.html>



## **Giving Back to Our Community - A Night at Women's Lunch Place**

Stewart is proud to, once again, be one of the sponsors for REBA's Women's Networking Group fundraising event for the Women's Lunch Place. The Women's Lunch Place (WLP) is a safe, welcoming day shelter community providing nutritious food and individualized services for women who are experiencing homelessness and poverty. To purchase tickets to the event and for more details follow this link:

<https://womenslunchplace.org/reba>

We hope to see you there!



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