



Dear Stewart Partners,

The New England team wishes you all a happy and safe 4th of July holiday. We hope you have time to relax and enjoy all that our short summer season has to offer.

In this week's update, we will provide a general overview of the most commonly requested lender endorsements in a residential loan transaction. In addition, we want to update you on a recent change to Maine's real estate transfer tax and provide useful guidance relative to Maine Powers of Attorney. Finally, as with all holidays when banks and settlement firms/companies are closed, we want to provide a reminder to be extra vigilant when it comes to fraud. We have seen fraudsters ramp up their efforts prior to a long weekend.



Commonly Requested Lender Endorsements:

The following is an overview of some of the more commonly-requested endorsements in a residential loan transaction, and the requirements to issue each of them.

ALTA 9 – Restrictions, Encroachments, Minerals (aka the Comprehensive Endorsement). This endorsement, as the name suggests, is a comprehensive endorsement in that it includes coverage for several different items. The endorsement provides coverage for loss arising as a result of violations of any covenants, existing encroachments across property or easement lines, and damage to improvements which may result from the exercise of mineral interests or other subsurface substance rights. There are a number of endorsements in the ALTA 9 series, but the lender typically wants the ALTA 9-06. As with most endorsements, there are requirements that must be met in order to issue. Generally speaking, you will need to confirm there are no rights of first refusal or any covenants or conditions affecting the land. A survey may also be required. For more detailed guidance on the underwriting requirements visit Stewart's Virtual Underwriter at:

<https://www.virtualunderwriter.com/en/guidelines/2012-4/GL133461086300000024.html>

ALTA 8.1-Environmental Protection Lien endorsement is available only for loan policies insuring residential property. The endorsement insures the priority of the insured mortgage over any environmental protection lien which has been duly and properly recorded in the county recorder's office, or filed with the clerk of the U. S. District Court for the district in which the Land is located, as of the Date of Policy and which is not shown in Schedule B. In addition, this endorsement insures the priority of the Insured Mortgage over any environmental protection lien provided for by any state statute in effect as of the Date of

Policy, except as otherwise noted in the endorsement. For more on the requirements to issue the ALTA 8.1, please review the guidelines found at:

<https://www.virtualunderwriter.com/content/stewart/virtualunderwriter/en/guidelines/2014-3/GL00000013.html>

The Secondary Mortgage Market Endorsement-This endorsement is issued with loan policies insuring 1-4 family residences only. It insures that easements set forth in Schedule B of the Policy do not adversely affect the beneficial use and enjoyment of the buildings and improvements presently located on the insured premises. This endorsement further insures that any restrictions, covenants, and conditions set forth in Schedule B of the Policy have not been violated and that future violations will not result in a forfeiture or reversion of title. For guidelines visit:

<https://www.virtualunderwriter.com/content/stewart/virtualunderwriter/en/guidelines/2008-6/GL00000589.html>

This is not a complete list of the commonly requested endorsements in a residential loan transaction. You are likely familiar with the Condo/PUD endorsement, as well as the variable rate endorsement. As always, we recommend you turn to Virtual Underwriter <https://www.virtualunderwriter.com/en.html> and your local underwriting counsel for any questions you have when it comes to available endorsements in your state and the requirements to issue them.



Maine to Expand List of Related Persons Exempt from Transfer Tax

On March 27, 2023, Maine's Committee on Taxation recommended the passage of LD 210 – An Act to Expand the List of Persons Exempt from the Real Estate Transfer Tax. The act modifies 36 M.R.S.A. § 4641-C (4) to add siblings, stepsiblings, stepchildren, and step grandchildren to the list of family members whose deeds are exempt from real estate transfer tax. Although the bill was carried over it was passed to be enacted in the next session.



Use Caution when Relying on Powers of Attorney in Maine Real Estate Transactions

On September 1, 2019, Maine overhauled its probate code, which was originally adopted in 1969 and codified under Title 18-A of the Maine Revised Statutes, and replaced it with the Maine Uniform Probate Code, which is now codified under the new Title 18-C of the Maine Revised Statutes. As part of that overhaul, Maine also amended the Maine Uniform Power of Attorney Act and moved it from 18-A M.R.S.A. § 5-901, et seq., to 18-C M.R.S.A. § 5-901, et seq. For a few reasons that are extremely important from a real estate title perspective, this law can be very unforgiving.

18-C § 5-905 provides as follows:

1. **Notices for durable power of attorney.** A durable power of attorney under this Part is not valid unless it contains the following notices substantially in the following form:

"Notice to the Principal: As the "Principal" you are using this power of attorney to grant power to another person (called the Agent) to make decisions about your property and to use your property on your behalf. Under this power of attorney you give your Agent broad and sweeping powers to sell or otherwise dispose of your property without notice to you. Under this document your Agent will continue to have these powers after you become incapacitated. The powers that you give your Agent are explained more fully in the Maine Uniform Power of Attorney Act, Maine Revised Statutes, Title 18-C, Article 5, Part 9. You have the right to revoke this power of attorney at any time as long as you are not incapacitated. If there is anything about this power of attorney that you do not understand, you should ask an attorney to explain it to you.

Notice to the Agent: As the "Agent" you are given power under this power of attorney to make decisions about the property belonging to the Principal and to dispose of the Principal's property on the Principal's behalf in accordance with the terms of this power of attorney. This power of attorney is valid only if the Principal is of sound mind when the Principal signs it. When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the Principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. The duties are more fully explained in the Maine Uniform Power of Attorney Act, Maine Revised Statutes, Title 18-C, Article 5, Part 9 and Title 18-B, sections 802 to 807 and Title 18-B, chapter 9. As the Agent, you are generally not entitled to use the Principal's property for your own benefit or to make gifts to yourself or others unless the power of attorney gives you such authority. If you violate your duty under this power of attorney, you may be liable for damages and may be subject to criminal prosecution. You must stop acting on behalf of the Principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events of termination are more fully explained in the Maine Uniform Power of Attorney Act and include, but are not limited to, revocation of your authority or of the power of attorney by the Principal, the death of the Principal or the commencement of divorce proceedings between you and the Principal. If there is anything about this power of attorney or your duties under it that you do not understand, you should ask an attorney to explain it to you."

Maine Title insurance underwriters are routinely presented with power of attorney documents lacking the notice provisions required by 18-C M.R.S.A. § 5-905 (2). This most often seems to occur when individuals unrepresented by attorneys obtain power of attorney forms from the internet. Somewhat fortunately for such individuals, 18-C M.R.S.A. § 5-906 (5) provides that "[a] power of attorney executed in this State is valid and enforceable 2 years after execution if the notice required by section 5-905, subsection 2 or the former Title 18-A, section 5-905, subsection (b) is included but is incomplete or defective in any respect." This curative provision is only helpful in cases where a power of attorney executed on or after September 1, 2019 lacking the required notice provisions is more than two years old at the time of its use to execute a deed or other document.

Given the complexities of Maine's statutory history with powers of attorney, we encourage you to always reach out to your Stewart underwriter before relying on powers of attorney. Even if you think the document is correct, a second set of eyes can be helpful.



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