

**New Jersey
N2K Hour:**

**Underwriting
Title Insurance
During a
Pandemic**

**Webex Presentation:
April 13, 2021**

stewart title®

Real partners. Real possibilities.™

What happens if the County Clerk's Office is Closed?

- The most current STGC Bulletin on COVID-19 issues is [SLS2020007](#).
- This bulletin has replaced SLS2020002 and SLS2020005
- We are no longer requiring a Gap indemnity for transactions or the COVID-19 exception to be added on title commitments.

Conducting County Searches in a Limited Capacity

- However, if you have satisfactory title information, but you are unable to record the recordable documents (including any mortgage and deed) because the county or other recording office is closed and is not accepting electronic filings, Stewart will insure the title if these conditions are met:
 - The policy will not exceed \$3 million;
 - You secure Stewart's customary title affidavit or a similar affidavit from the current owner;
 - You secure Stewart's customary title affidavit or a similar affidavit from the current owner; (continued next slide)

Conducting County Searches in a Limited Capacity (cont.)

- The title examination does not show that the seller, purchaser or borrower is subject to any outstanding involuntary or statutory liens (such as judgment liens, tax liens, or mechanic's liens) or lawsuits;
- The insured mortgage is not a construction mortgage and there has been no recent construction; and
- You determine that the closing instructions of the proposed insured lender and purchaser provide, or as clarified, acknowledge that recording and the return of the original deed and mortgage will be delayed until the county or other recording office is open.

Starter Policies and Commitments

- We have two bulletins which address the use of starters for a search, [SLS2011004](#) (commercial) and [SLS2009004](#) (residential).
- Subject to any local regulatory requirements, establishing more stringent standards, you may use starters as follows:
- You may use a prior Owner's Policy with specific Schedule B title exceptions to begin your search, even if the prior Owner's Policy was issued by another title insurer (even if it has been merged into another title insurer) or title insurance agent.

Starter Policies and Commitments (cont.)

- You may use a prior Loan Policy with specific Schedule B title exceptions to begin your search for issuance of a new Loan Policy, even if the prior Loan Policy was issued by another title insurer or title insurance agent. If you will issue a new Owner's Policy based on a prior Loan Policy as a starter, you should begin your search one year before the date of the prior Loan Policy.
- You may use a prior Commitment for Title Insurance, from a prior transaction or otherwise approved by our underwriters, with specific title exceptions to begin your search, even if the prior commitment was issued by another title insurer or title insurance agent.

Starter Policies and Commitments (cont.)

- For a **commercial** transaction, the use of a commitment must be approved by a senior underwriter.
- You may not use a commercial or residential short form (a form not containing specific title exceptions) or short form commitment as a starter for an Owner's or Loan Policy that will have specific title exceptions.
- You may not use a Limited Coverage/Home Equity/Junior Loan/Foreclosure Policy or Guarantee as a starter.
- You should also do your regular search of names for parties who are in the chain from the time of commencement of your examination, including those parties shown as vested in title by the starter.

Starter Policies and Commitments (cont.)

- A regular search for taxes, assessments and other charges must also be done.
- If a significant gap between the current date and the date of the available title records exists in the applicable county, you should also search that approximate gap time behind the date of the starter.
- For a commercial transaction, you must (1) secure copies of all instruments referred to in the prior title evidence, (2) secure the instrument vesting title in the current owner, (3) review all such instruments and write your own exceptions in your own words after such review (unless you have a prior Stewart policy).

Can we insure a property with a limited search?

- The use of starters to conduct searches has become very popular since the onset of the pandemic.
- If you obtain a limited search for a specific property, please consult your underwriter for further guidance, so we can confirm if the transaction is insurable.
- Also, please follow up with the parties on your transaction, regarding any missing information that could not be obtained from your searcher, such as tax records, agreements, surrogate documents, proof of payoffs for any open mortgages of record.

Can we insure a property with a limited search? (cont.)

- If your searcher is unable to obtain certain documents from the County as a result of COVID, please have the searcher add notes to their search regarding the missing information, so an underwriter can review it further.
- If the search is determined not to be sufficient after review by an underwriter, then Stewart will not be able to insure the transaction.
- If you have any questions pertaining to your searches, please contact your underwriter.
- Lastly, please always check for alerts from Stewart if County offices are closed as a result of COVID-related issues.

E-Recording Procedures and Software

- Within the last year, there have been ongoing issues with mail being sent to the County offices for recording.
- Therefore, we highly recommend e-recording.
- Please confirm with the County Clerk's Office that you have the ability to e-record documents for your transaction, as some counties may not permit e-recording.

Remote Audio/Visual Online Notarization (RIN)

- On April 14, 2020, Governor Murphy signed NJ Bill A3903/S2336 into law, which allows remote notarial acts, and other acts executing and verifying certain documents, by notaries public and other authorized officials during the public health emergency and state of emergency declared by the Governor's Executive Order No. 103 of 2020.
- Stewart issued the following bulletin, [NJ2020004](#), which addresses the conditions for the notarial process, as well as the requirements for using Audio/Video Conferencing Technology as a result of the new legislation.

Platforms Suitable for RIN

- Please note that “wet” signatures by both the individual and notary are still required under the law.
- Electronic notary signatures and stamps are not permitted, so please be careful in using certain platforms and companies that only offer a digital closing for executing documents.
- The following are some providers which offer audio/video conferencing and the ability to record such conference:
 - Microsoft Teams
 - Go To Meeting
 - Cisco WebEx

Platforms Suitable for RIN (cont.)

- A good example is a refinance transaction where the husband is currently in Ukraine and the wife is in NJ, and the parties would like to have a POA utilized for the husband so that the wife can sign the loan closing documents for both parties.
- So here, the husband can sign in front of the notary (via camera pursuant to the new law) but the original document must be sent here from Ukraine, so it can be properly stamped by the notary.
- The POA will then need to be recorded, and you will also need to check with the lender to make sure they will accept this.

Additional Underwriting Requirements

- The approval of the Audio-visual feature is limited to a policy amount up to \$1,000,000.
- Real Estate transactions in excess of \$1,000,000 can be considered, however Issuing Offices shall obtain Stewart Underwriter approval.
- The transaction involves a cash sale/purchase; purchase money transaction with financing; or a transaction involving a refinance, either with or without cash-out.
- In other transactions, please obtain Stewart Underwriter approval.

Additional Underwriting Requirements (cont.)

- Parties, including lender, must authorize in writing the use of the video notary process.
- The title company must verify that the County Clerk will accept the Notary performed in this process.
- Please note that Zoom or FaceTime are not recommended platforms for using RIN, but please contact your underwriter for any questions if the parties wish to use one of these platforms.

Hard Money Loan Transactions

- A hard money loan is generally a short-term loan, with a higher than current interest rate and a very short term, usually 1-5 years.
 - Non-institutional lender
 - High loan fees
 - Often used in “flip” transactions
 - Apparent strong loan-to-value ratio since the loan is based on the strength of the collateral and not the credit of the borrower

Hard Money Loan Transactions (cont.)

- Hard money loans are typically issued by private investors or companies.
- One of the risk factors with hard money lender transactions is that many of these lenders conduct very minimal due diligence on the borrower or on the property.
- Essentially the hard money lender relies on the perceived value of the property and the coverage provided in the title insurance policy. As a result, hard money lender transactions may be significant targets for fraud.
- Therefore, we would need to carefully review the transaction to make sure there are no red flags, so we can proceed in insuring the loan.

Potential Risks for Insuring Hard Money Loans

- The following are some common factors that our claims department has identified in handling fraud claims in non-institutional loan transactions:
- Documents are frequently signed with loan broker or lender's in-house notaries;
- Corporate/LLC organizational documents are sloppy, missing information and often poorly drafted;
- There is no direct contact with the sellers or buyers/borrowers and they are often “unavailable” or “out-of-state”;

Potential Risks for Insuring Hard Money Loans (cont.)

- There is extreme pressure as a rush transaction requiring an immediate close;
- Independent escrow handles funds and often sends money outside of the state and country and disburse loan proceeds to parties other than directly to the seller/borrower;
- Payoff demands come from parties other than directly from the private beneficiaries or institutional lenders; and the title appears to be free and clear or has minimal liens (check for fraudulent reconveyances).

Underwriting Requirements

- Ensure that loan proceeds are payable to the borrower/seller only, not to a third party unless:
- The proceeds are being used to pay off existing encumbrances;
- The proceeds are being paid to contractors/suppliers for work on the property; or
- The proceeds are being paid to another escrow or title company in connection with the borrower's purchase of another property (secure evidence that borrower is the actual purchaser);

Underwriting Requirements (cont.)

- Check that all borrower's signatures match all documentation;
- Don't accept signatures under a Power of Attorney without specific underwriter approval;
- Use your own notary, a notary known to you or a notary from a trusted escrow company. Do not use the borrower's lender's notary or the loan broker's notary;
- Where seller/borrower is receiving \$100,000 or more in loan proceeds, require two forms of identification; and
- If available, run borrowers' names on LexisNexis to help confirm validity.

Underwriting Requirements (cont.)

- If results from these due diligence steps raise any concerns with regard to the transaction then:
- Contact the seller/borrower directly and ask questions about the real property that only the actual owner would know.
- For example, how old is the home? Is property vacant? If yes, what is the mailing address on the tax bill? Are you obtaining a loan secured by the property? Do you have existing debts against the property?
- Confirm that the lender and/or broker performed an actual walkthrough of the property and, if so, who granted access;

Underwriting Requirements (cont.)

- Check online for photos, etc. that may be available of the seller/borrower or seller/borrower's trustee, member/manager, or officer as the case may be to see if consistent with identification provided; and
- Review the transaction with your Underwriter.

Use of POAs during Pandemic

- A power of attorney (POA) has become more frequently used by parties to a transaction during the pandemic.
- With travel restrictions in place, and the inability of a lot of individuals to move around safely, a POA has been the most viable option for parties to use in having their documents executed by a third party.
- However, please keep in mind that strict care must be used when reviewing the validity and appropriateness of a power of attorney.
- Please be sure that the POA has been properly acknowledged, not just witnessed and notarized.

Use of POAs during Pandemic (cont.)

- The POA must have original signatures, and it must be in recordable form.
- Also, the POA must be recorded prior to the documents being executed by the holder of the Power.
- Please note that there may be instances where a POA cannot be used under any circumstance.
- If a business entity is in title or title is held by a guardian or conservator, then a POA cannot be used, since the fiduciary cannot delegate their authority.
- Please follow up with your underwriter for further guidance when reviewing a POA for a specific transaction.

Insuring Properties Coming out of Foreclosure

- Please be aware of extensions regarding COVID-19 foreclosure moratoriums and forbearances relating to federally-related mortgage loans.
- Stewart's national bulletin, [SLS2021004](#), addresses our company policy for insuring transactions coming out of foreclosures.
- Please do not insure based on foreclosures begun or completed on or after March 1, 2020, until we notify you otherwise, or unless you secure Stewart Title Guaranty Company underwriter approval.

Insuring Properties Coming out of Foreclosure (cont.)

- Also, please do not waive or assume a lien or procedural requirement has expired if it has not expired before March 1, 2020, until we notify you otherwise, or unless you secure Stewart Title Guaranty Company underwriter approval.

Tax Sale Foreclosures

- Please note that we also have a state bulletin, [NJ2011002](#), regarding insuring transactions where there has been a tax sale foreclosure.
- The concern here is when insuring transactions derived through a tax sale foreclosure, the property owner may seek to overturn the final judgment and redeem the certificate.
- Accordingly, where less than 1 year has elapsed from the recording of the final judgment Stewart title will not insure title into a purchaser from the foreclosing entity or a subsequent resale.

Tax Sale Foreclosures (cont.)

- If more than 1 year has elapsed from the recording of the final judgment, a chancery abstract must be reviewed to determine that all necessary procedures have been followed and that all parties being cut off have been given proper notice of the foreclosure.
- Any open federal liens of record must be satisfied unless there has been a judicial sale and proper notice given.
- Please consult your underwriter if you have any questions or need further guidance.

Wrap-Up and Review

- Our national bulletin, SLS2020007, is our most recent bulletin which addresses requirements for insuring transactions that are affected by ongoing issues with COVID-19, and county office closures.
- We have two bulletins which address the use of starters for a search, SLS2011004 (commercial) and SLS2009004 (residential).
- NJ now permits RIN, and our state bulletin, NJ2020004, addresses the conditions for the notarial process, as well as the requirements for using Audio/Video Conferencing Technology as a result of the new legislation.

www.VUwriter.com



Virtual Underwriter

Everything you need.

With VU, you have access to information needed to underwrite a real estate transaction, 24 hours a day, seven days a week. [Click here](#) for a tutorial.



<h3>Keyword Search</h3> <input type="text" value="Example : Absentee"/> <input type="submit" value="Find it"/> <input checked="" type="radio"/> All of these words <input type="radio"/> This exact phrase <input type="radio"/> Any of these words	<h3>Select a Location</h3> <input type="text" value="Select a state"/>
--	--

Virtual Underwriter

stewart title

Real partners. Real possibilities.™

NJUWing@Stewart.com



THANK YOU FOR JOINING US

Please mark your calendars for our:

May N2K HOUR

Tuesday

May 11th

11:00AM