



Dear Stewart Associates,

We hope you have had time to enjoy the spring-like weather New England has been experiencing. The spring real estate market is similarly warming up!

In this week's update, we are republishing a recent article from the REBA Blog written by Rhonda Duddy, Esq., Massachusetts and New Hampshire Underwriting Counsel here at Stewart, regarding estate planning and how it impacts coverage under the title insurance policy. We also wanted to share with you a story from Alaska showing that the so-called "hello letters" Stewart recommends you send to sellers at the beginning of a transaction really do work to help prevent vacant property fraud.



The Impact on the Owner's Title Insurance Policy of Transferring Real Estate to a Trust for Estate Planning Purposes By: Rhonda L. Duddy, Esq., Underwriting Counsel, Massachusetts and New Hampshire

Does an owner policy of title insurance terminate when title is transferred to a trust for estate planning purposes? That is the question title insurance underwriters are frequently asked by insured owners and/or their estate planning attorneys.

The answer to this inquiry is both yes and no based on the policy issued because the covered risks, terms, conditions, and exclusions vary depending on the kind and version of policy issued. For instance, a 1992 ALTA owner policy differs from a 2006 and a 2021 ALTA owner policy. Additionally, the 1998 ALTA homeowner policy (sometimes referred to as an enhanced policy) differs from a 2008, 2010, 2013 and 2021 ALTA homeowner policy.

A typical scenario is subsequent to the purchase of the property, the named insured conveys the property to trustee(s) of a trust for estate planning purposes. Depending on the policy form issued at the time of purchase, if the named insured on the policy is no longer the owner of the real estate as a result of the transfer, under the terms of the policy coverage may have terminated due to the fact that the property is no longer owned by the named insured. In that instance, the current owner no longer has the benefit of the title insurance policy. Therefore, it is important that terms and conditions of the policy be reviewed, particularly the policy's continuation of coverage section and the definition of insured section in order to determine whether coverage under the policy might be impacted prior to transferring title from a named insured.

For example, looking at the 1992 ALTA owner policy, the continuation of coverage section contains the following or similar language:

The coverage of this policy shall continue in force as of the Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

If the policy that was issued includes this or similar language and subsequently the insured conveys the property, the insured would no longer have an estate or interest in the land. Depending on the terms of the trust and how the beneficial interest is allocated, an owner might have a personal property interest in the trust, but they would no longer have an individual interest in the land and would no longer have coverage under the policy.

Other owner and homeowner policies may contain continuation of coverage provisions that include language that the policy also insures the trustee or successor trustee of the insured's trust or any estate planning entity to whom the insured transfers their title after the policy date. In these instances, no further action may be required since the terms specifically state that policy coverage is continued under these specific circumstances, so long as it was an insured's trust or a trust or entity created for estate planning purposes.

It is also important to review the policy's "definition of insured" section in order to determine whether there are any other parties or entities that are included falling under the term, other than the named insured. In certain circumstances, a transfer to a third party or entity might not terminate coverage if that party or entity is included in the definition of insured. It is important to note that the definition of insured varies depending on the version and type of policy issued.

For example, looking again at the 1992 ALTA owner policy that contains the following or similar definition of an insured:

"Insured": The insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

Some policies expand the list of successor insureds to include certain parties who obtain title other than by operation of law, including a spouse who receives title upon dissolution of marriage and the trustee of a trust to whom title is transferred. If the policy recognizes a transfer to a person or entity falling under the definition of an "Insured" then no further action may be required in order to continue coverage.

Due to these nuances in the various title insurance policy forms, it is important to confirm continuation of coverage before transferring real estate so that the title insurance policy purchased when the property was acquired is not terminated upon transfer. As discussed,

some policies have strict and limiting language relative to when coverage terminates while others have broader continuation of coverage language.

What should you do if a client contacts you to transfer their property to a trust? You'll want to find out whether they have a current owner's policy of title insurance. If it is determined that the existing policy does not cover transfers to trusts, the client may have the option to either buy a new policy or obtain what is called an "additional insured" or "change" endorsement to the original policy. A policy endorsement would then name the trustee(s) of the trust as an additional insured and coverage would continue. Be aware that it is not an option to transfer the property out of the trustee(s) of the trust back to the named insured in order to regain coverage. The first conveyance may terminate coverage so conveying it back would not reinstate the policy.

Please be sure to review a client's title insurance policy before transferring real estate into a trust. If the current policy is with Stewart, please contact an underwriting counsel if you have any questions regarding whether coverage would continue.



Using "Hello Letters" to Help Avoid Fraudulent Sales

We understand you're probably sick of hearing about seller fraud and vacant property scams, but they continue to happen all over the country. In our December 6, 2023 mid-week update, we told you about two seller impersonation scams in New Hampshire that were avoided because the agent sent out the "hello letter" to the seller's address as shown on the property tax records. A February 23, 2024 article published in the New Hampshire Business Review confirms the fraudsters are still targeting land in New Hampshire, including a scammer trying to convince a realtor they were a deceased homeowner: [Real estate agents tracking new fraud scheme in Lakes Region](#)

While we're always thankful when a Stewart policy-issuing agent is able to avoid insuring a fraudulent transaction, keep in mind that your stock in the local community may go up when you help thwart these scams. A recent letter to the editor published in the Anchorage Daily News highlighted the prevalence of this type of fraud – and noted that a scam involving the author's lot was halted because he received a letter from the local Stewart Title office asking about the upcoming sale. Fortunately the owner opened the letter and immediately notified Stewart that he was not, in fact, selling his lot. The owner noted that "[d]ue to the integrity and careful professionalism of Stewart Title, we were not robbed of our property."

To read the letter, follow the link here: [Letter: Real Estate Scam](#)

A sample of the "hello letter" can be downloaded here: [Hello Letter Sample](#)



Vacant Land Fraud – Prevention Resource from ALTA

Training your teams and educating your business partners is critical in helping detect and prevent vacant land fraud. ALTA has created a two page infographic that explains the red-flags and lists precautions that you and your staff can take, in addition to the “hello letter” described above. The piece is a great reference and reminder of how to stay vigilant. To view and download this infographic, follow this link: [Seller Impersonation Fraud in Real Estate](#).



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