



Dear Stewart Partners,

In this week's edition, we are providing you with some information about attachments and executions in Massachusetts and the issue of access in title policies. Additionally, we have included links to a few recently issued Bulletins, in case you missed them.

Also, we are pleased to share that several charities nominated by the Stewart New England team, many of them local to the area, have been selected as Stewart Title Foundation's Fall Community Service Award winners. More information on the award recipients and the Stewart Title Foundation can be found below.

Lastly, we are reminding our Massachusetts agents that our November installment of Stewart Underwriters Talk Title is scheduled for November 5 at 11:00 AM. Rhonda Duddy will present a concise 30-minute presentation on Fiduciaries and Self-Dealing. For registration information, follow the link below. Stewart Academy is also hosting a webinar this Thursday on the new FinCEN rule. CLE credit will be available for attendees. To register for either of these programs, follow the links below.



**Attachments and Executions Impacting Titles in Massachusetts – Back to Basics** By: Jutta R. Deeney, New England Regional Underwriting Counsel/Senior Underwriter and Rhonda Duddy, Massachusetts and New Hampshire Underwriting Counsel

Attachments and executions are two of the more common involuntary liens that we see in real estate titles. An attachment is a pre-judgment remedy that allows a creditor to secure its potential recovery by attaching property owned by a debtor of that creditor. In Massachusetts, in order to obtain an attachment, the judgment creditor must initiate a lawsuit and ask the court to allow it to attach the defendant's property. The attachment also serves as a placeholder in terms of priority for the creditor. If the creditor is successful in obtaining a judgment against the defendant and follows the statutory procedure when it obtains an execution after judgment, the execution will relate back to the date of the recording of the attachment in the chain of title, even if it is levied years later.

Attachments do not need to be property specific, and will attach to all property in a particular county owned by the defendant named in the attachment. This is distinct from an execution, which is what the court will issue upon a judgment creditor's request after judgment has issued in favor of the judgment creditor. An execution must be property specific, otherwise it will not create a lien against the property.

As stated above, an attachment is a pre-judgment remedy, and it is possible that the party who obtained the attachment isn't successful and doesn't obtain judgment against the defendant. If judgment enters for the defendant, there are two ways to establish of record that the attachment is no longer an encumbrance. The first would be to record a release of the attachment. The release can be executed by the attorney for the attaching party as reflected in the court's docket. The second method would be to record a clerk's certificate showing judgment in favor of the defendant.

Further, an attachment can also expire. Under MGL c. 223, §114A, an attachment will expire 6 years from the date of recording unless brought forward prior to its expiration. There is, however, a caveat to this six-year period that is important to note. Should the owner of the attached property file bankruptcy during the six-year period, the period is tolled during the time that the judgment debtor is in bankruptcy. For this reason, an attachment may still be valid beyond the six-year period.

If an owner of the property wishes to sell or refinance and the title discloses a valid attachment, it must be released. If the owner has other property in the same county, it would be acceptable to release a specific piece of property from the attachment, while the remaining land in the county remains encumbered. If the debtor doesn't own other property, or if that other property doesn't provide sufficient security, the attaching creditor may not agree to release the property without the debtor providing a bond or other adequate substitute collateral. Given that obtaining the cooperation of the attaching creditor when seeking a release may not be straightforward due to the financial considerations, addressing removal of the attachment should be done as early as possible prior to closing, as court involvement may be necessary.

Similarly, pursuant to MGL c. 236, §49A a levy of execution becomes void after six years from the date notice was recorded at the Registry of Deeds, unless it is brought forward. Also, the same concept of tolling also applies to an execution, which can result in an execution being valid beyond 6 years.

Clearing an execution from title will require obtaining and recording a clerk's certificate showing that the execution was returned to the court satisfied. From a procedural perspective, a judgment creditor, upon receipt of payment of the amount due, must mark the execution satisfied and return to the court. Alternatively, the sheriff who seized the property, as evidenced by the recording of the execution, can execute an instrument of release. Note, unlike an attachment, a release executed by an attorney for the attaching creditor is not sufficient to release the execution.

We often receive questions about the 6 year statute of limitations involving seizures, which is set forth in the statute, and the REBA title standard 47 which states that "the title of a person against whom there is a recorded seizure on execution is not on that account defective if the seizure has been of record for six years and ninety days without record of enforcement by sheriff's sale or set-off, unless brought forward..." The standard includes an additional 90 days, which the statute doesn't refer to.

It is important to note that the execution is not good for six years and 90 days. Rather, the 90 day period refers to the time period in which a sheriff's deed must be recorded if there has been a sale of the seized property. Given that such a sale could occur on the very last day of the six year period, the ninety days accounts for the time period in which the deed

should be recorded. Procedurally, the sheriff is not required to record a notice with the registry of deeds that the property is being sold, so the title would not disclose the scheduling of a sale.

Regarding the recording of the sheriff's deed, an understanding of MGL c. 236, §27 is important. This statute states: "Such [sheriff's] deed shall .... be valid as against the debtor and any person claiming under him who has actual knowledge thereof and, if recorded within three months after such sale in the registry of deeds ... shall be valid as against any other party."

There may be circumstances where Stewart Title Guaranty Company may authorize a policy of title insurance before the expiration of the ninety day period set forth in the REBA title standards, and should you have such a situation that you wish us to consider, please reach out to your local underwriting counsel, as we understand that every situation may present unique facts.

Attachments and executions can present unique issues and your Massachusetts underwriters are here to help find solutions so that a policy of title insurance can be issued.



**Understanding the Right of Access in Title Insurance Policies** By:  
Eileen C. O'Shaughnessy, Esq., Rhode Island Underwriting Counsel

When it comes to title insurance, one of the most critical aspects to consider is ensuring that a property has proper access to and from the land. Under Covered Risk number 4 of the Owner's and Loan Policies, title insurance protects against loss or damage arising from the lack of a right of access to and from the property. But what exactly does this mean, and how does it affect the policies?

At the core of this coverage is the distinction between legal access and physical access. While the title insurance policy insures that the insured holds a legal right of access to and from the property, it does not guarantee the physical condition of the access itself. The examination of title must confirm that the land has access—whether that access is through a public road, a private easement, or another recognized method.

If access is provided via an easement, the title search must include an investigation of that easement, even if it isn't explicitly described in the policy. The title company requires satisfactory evidence of the right of access before it can issue a policy. If the examination reveals any issues with access, the commitment will typically include exceptions related to the lack of access and will require additional evidence or corrections.

Several situations may necessitate exceptions or additional requirements when examining access rights:

1. **Lack of Access:** If the examination reveals no right of access, the title commitment should except this fact and require proof of access.
2. **Partial Lack of Access:** In cases where access is restricted or waived by a grant or condemnation, the policy may provide an exception based on this partial loss, but the property may still retain access from another source.

3. Pedestrian-Only Access: If only pedestrian access is available (e.g., a footpath), and the Homeowner's (a/k/a Enhanced) policy is being issued, this limitation must be identified as a Schedule B exception, due to the fact that this policy insures both vehicular and pedestrian access, which is broader than the legal access coverage of the basic / standard policy.
4. Access by Easement: If access is granted by an easement, especially a private one, it must be valid, recorded, and free from encumbrances. Additionally, the title to the servient tract (the land burdened by the easement) must be examined.
5. Condemnation: If access is removed due to a condemnation action, this must be disclosed as an exception in the policy. A partial condemnation may still allow some rights of access, in which case a specific exception for this scenario will be noted.

Generally, for access to be deemed legal under the terms of a title policy, the property must meet one of the following criteria:

- It abuts a public street, road, or highway.
- It abuts a private street within a subdivision that has access to a public road, even if the private street is not dedicated for public use.
- The property is benefited by an easement that grants access.

The title insurance policy generally covers the legal right of access, meaning it insures that the property owner has the right to access the property via a legal route. However, this coverage does not include physical access, such as whether the road or path is in good condition, wide enough for vehicles, or passable under various conditions (e.g., seasonal flooding). This distinction is important because, in some cases, a property may have legal access, but the physical means of access may be obstructed or in poor condition.

As indicated above, access to a property can also be provided through easements. If access is provided by an easement over neighboring property, the title to that property must be thoroughly examined. In cases where easements are implied or based on state law (e.g., easements of necessity or prescription), additional care must be taken, and approval from your Stewart underwriting counsel will be necessary.

For example, if a property is landlocked and only accessible via an unrecorded easement or implied easement, it may not be possible to issue a policy without exception for the lack of an access right, unless a court or judicial determination has confirmed the existence of this easement.

For situations where access rights need to be more explicitly defined or expanded, endorsements can be added to the title insurance policy. These endorsements might:

- Insure against loss due to a lack of access to and from a named street.
- Insure against loss due to the lack of pedestrian and vehicular access over an adjacent street or easement.
- Provide additional coverage for any easement-related issues, including access to an adjoining road or highway.

The right of access is a crucial component in title insurance policies. Policy issuing agents must be diligent in reviewing their title searches to confirm both the legal rights of access and any potential issues that may arise, such as restrictions, condemnation, or the existence of private easements.

When in doubt about access, consult with your Stewart underwriter partner to confirm that no exceptions may be needed or further investigation undertaken. Understanding and confirming access rights at the outset can help prevent complications down the road, ensuring a smoother transaction process for all parties involved.

For more details on access-expanding endorsements and other related policies, please refer to the underwriting guidelines and state-specific forms provided by Stewart Title, which can be accessed via Stewart's [Virtual Underwriter](#) website.



### **Stewart Cares for Our Community - CONGRATULATIONS! 2025 Fall Community Service Award Winners!**

Stewart has a history of supporting non-profit organizations ranging in size from large, international organizations to small, local organizations. Stewart regularly donates to local charities that are nominated by its employees, through its Community Service Award program. This fall, 618 non-profit organizations will be receiving a donation from The Stewart Title Foundation. The Fall 2025 recipients include the following charities:

The **MSPCA-Angell**, nominated by Rhonda Duddy, Massachusetts and New Hampshire Underwriting Counsel. This organization was founded in 1868 and is dedicated to the health and welfare of animals.

The **Rhode Island Bar Association Volunteer Lawyer Program**, nominated by Eileen O'Shaughnessy, Rhode Island Underwriting Counsel, which provides no cost legal services for civil, probate and family matters to indigent individuals.

The **Norwell High School Boosters**, nominated by Jutta Deeney, New England Underwriting Counsel, is a parent-driven volunteer organization supporting athletes with scholarships, training, coaching and equipment at Norwell High School.



### **Recently Issued Bulletins:**

[SLS2025012](#): A Bulletin issued October 15, 2025 entitled "Federal Government Shutdown Affecting Payoffs from and Payments to Government Entities."

[MA2025003](#): A Bulletin issued to all Massachusetts issuing agents about the DOR's new Revenue Withholding Return Filing requirements.



### **Upcoming Webinars**

**Massachusetts Underwriters Talk Title Webinar** – Fiduciaries and Self-Dealing –  
November 5, 2025.

Please join Rhonda Duddy, MA and NH Underwriting Counsel, on Wednesday, November 5, 2025, at 11:00 AM for the next installment of our talk title series. In this webinar, Attorney Duddy will discuss fiduciary duties with respect to real estate transactions when title is derived from a trustee, by an attorney in fact under a power of attorney, or when taking title from probate. To register follow this link: [Massachusetts Resources](#)

**Stewart Academy Webinar** – Understanding the FinCEN Rule on Anti-Money Laundering Regulations for Residential Real Estate Transfers. This program will be held on October 23, 2025 at 2:00 PM. Registration link: [Stewart Academy FinCEN Webinar](#)



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