**New England Regional Midweek Update**
**9/10/2025**

Dear Stewart Partners,

As summer winds down and the crisp air of September settles in, it feels like a fresh start is in the air. Whether it's kids heading back to school, the return of fall routines, or just the excitement of cooler days ahead, this time of year always brings new energy and focus. In this week's Mid-Week Update we are discussing Connecticut Title Standard 9.1 which addresses inconsistencies in dates in conveyances and other instruments. Further, we are highlighting a recently decided case by the Rhode Island Supreme Court regarding easements and the impact of subdividing the dominant parcel.

Also, in case you missed it, last week, Stewart announced an increase in rates in Massachusetts. Further, CPLs now carry a fee in Massachusetts. The rate increase is applicable to owner policies only. To view the full bulletin, please follow the link below. Additionally, a Special Alert was issued to Rhode Island agents and approved attorneys involving property located in Portsmouth. To view details, follow the link below.

Lastly, as a reminder, Tracie Kester, Stewart's Associate Senior Underwriting Counsel for Massachusetts, is sharing her expertise about MassHealth liens with REBA members as part of a webinar hosted by the Massachusetts Real Estate Bar Association on September 17, 2025. For more details and to learn how to register, follow the link below.

## **Connecticut Title Standard 9.1: Effect of the Omission of or Inconsistencies in the Recitals of Dates in Conveyances and Other Instruments Affecting Title** By: David Veleber, Esq. Connecticut Underwriting Counsel

Over the past few months, I have written on many of the Standards of Title regarding releases of mortgages. In a continuing series discussing Connecticut Standards of Title, this week I am discussing the impact of the omission of dates, or inconsistencies therein, within a conveyance and how the Standards state this may affect marketability. Standard of Title Chapter IX addresses matters related to execution, witnessing, and acknowledgment of conveyances. Within this chapter, Connecticut Title Standard 9.1 addresses the situation where there is an omission of the date in the conveyance or inconsistencies in the recital of dates.

Standard 9.1 states:

"Omission of the date of execution from a conveyance or other instrument affecting title does not impair marketability. Even if the date of execution is of particular significance, an

undated instrument will be presumed to have been timely executed if the dates of acknowledgment and recordation and other circumstances of record support that presumption.

Inconsistencies in the recitals or indication of dates, as between dates of execution and acknowledgment or recordation, do not impair marketability. Absent a particular significance of one of the dates, a proper sequence of formalities will be presumed, notwithstanding such inconsistencies."

This issue recently came up in the context of a warranty deed that was signed, witnessed and acknowledged. The deed was dated next to the witness lines but the attorney who took the acknowledgment did not fill in the date, month or year in the acknowledgement. This Standard is useful and important because we often get questions regarding what to do when there are such omissions and inconsistencies.

Per Comment 1 of the Standard, Connecticut General Statute Section 47-5 contains the requirements as regards the formalities necessary to properly convey any estate or interest in land and to properly create a power of attorney. But, nowhere in this statute is there a requirement that the deed or other instrument be dated. Hence, the validity of a conveyance or of a power of attorney is not dependent upon its being dated, though the date of the deed is one of its formal parts. The same is true as regards to acknowledgments, since there is no statutory requirement that a certificate of acknowledgment be dated.

Under Comment 2, the date of execution and the date of acknowledgment are mere recitals and, like other recitals, are important if the date is in issue. While a stated date is presumably correct, it is always subject to rebuttal or explanation. Accordingly, a deed is good which contains an incorrect, inconsistent or impossible date or no date at all.

As outlined in Comment 3, the only date which is crucial to a conveyance is that of delivery, since prior to delivery, the deed or other instrument is a legal nullity. Once a deed has been delivered, the subsequent destruction of it, even with the consent of both parties, has no effect whatsoever on the grantee's title. Neither does a redelivery of the deed from the grantee to the grantor affect the grantee's title. Therefore, the effective date of a deed is neither the date of its execution nor acknowledgment, but rather the date on which it was delivered.

Sometimes the issue of trying to correct a conveyance arises by attempting to give a new or replacement deed. Under Comment 4, while the grantee's title based on a delivered deed may be expanded in quality (e.g., from a life estate to a fee simple), or as to the quantum of property conveyed (e.g., from 2 acres to 4 acres), the grantee's title as conveyed by the first deed cannot be diminished, either in quality or amount, by a subsequent so-called "correcting" deed.

Since the date of delivery is so important, and more important than the date the deed was executed, it is important to be able to determine when that delivery may have occurred. Comment 5 states that, since the date of delivery is never found in the deed, presumptions have been developed to assist in determining the delivery date when that becomes an issue. One such presumption is that the date of the execution of a deed constitutes presumptive evidence of the date of its delivery. New Haven Trust Co. v. Camp, 81 Conn. 539,540-41 (1909). If a deed attested to and acknowledged is not dated or is

dated at a time later than the recording date, there is a rebuttable presumption that the deed had been delivered as of the date of recording. Sweeney v. Sweeney, 126 Conn. 391, 395 (1940). However, it can always be proved that the delivery of a deed did not occur until after the date of its execution. Mix v. Cowles, 20 Conn. 420, 425 (1850); Goodwin v. Keney, 49 Conn. 563, 567 (1882). This proof of the actual date of delivery can always be shown by parol evidence. Beers v. Hawley, 2 Conn. 467, 469 (1818). Further, it may be established by parol evidence that the deed was never delivered to or accepted by the grantee, either actually or constructively, in which case the deed is a nullity. If the deed was beneficial to the grantee, however, it is rebuttably presumed that the grantee accepted delivery. New Haven Trust Co., 81 Conn. at 542.

Notwithstanding the above, of course, properly executing and dating a conveyance or other instrument is always the best practice. That being said, the good news is that Connecticut Title Standard 9.1 provides guidance that errors as to dates in the document or acknowledgement do not impair marketability, except in those extremely rare instances when the date of execution is so significant as to impact the validity of the conveyance. This Standard is helpful to real estate practitioners because it saves them time and effort by not requiring the re-execution of a deed for such a minor defect or omission.

In the case where you run into a party, such as a lender, who notwithstanding this Standard, is not comfortable leaving a recorded but undated document, a simple remedy is to record an affidavit of facts under Connecticut General Statute Section 47-12a stating the issue and what the proper date should have been. Alternatively, the original instrument can be obtained and re-recorded after the date is filled in.

Please contact your local Stewart underwriter to discuss a specific transaction or any questions regarding this, or any other, Standard of Title.

## **Rhode Island Supreme Court Clarifies Express and Implied Easement Rights in *McElroy v. Stephens*** By: Eileen C. O'Shaughnessy, Esq., Rhode Island Underwriting Counsel

On March 11, 2025, the Rhode Island Supreme Court issued its opinion in Michael R. McElroy and Christine O. McElroy v. Marilyn O. Stephens et al. (No. 2023-249-Appeal), resolving a decades-long dispute over access to Seaweed Beach in Narragansett. The Court's analysis provides important guidance on how historic express easements are preserved through successive conveyances, and under what circumstances implied easements by necessity may be recognized.

In 1929, an easement was granted to the "Davis Heritage" property, benefiting Lots 1 and 2, to allow access over Seaweed Beach. Over time, the owner of Lots 1 and 2 subdivided the lots and the McElroys eventually became an owner of one of the smaller, subdivided lots. The McElroys' parcel, purchased in 1986, no longer abutted the Seaweed Beach. Neighboring parcels came to be owned by the Stephens and the Anthonys. The McElroys' 1986 deed incorporated "existing easements," but access to the beach required passage across adjoining land.

Litigation ensued in 2016, raising questions of whether the 1929 easement remained valid and whether an implied easement existed over the Stephens' land to reach the beach. The Superior Court, after remand from an earlier Supreme Court decision (2020), found both an

express easement over Seaweed Beach and an implied easement across the Stephens' property. The defendants appealed.

The Supreme Court affirmed the Superior Court's judgment. The Court emphasized that the 1929 easement was appurtenant to the Davis Heritage property. Because the easement was never expressly released or extinguished in subsequent conveyances, it continued to run with the land and benefit the McElroys' lot. The Court rejected defendants' argument that the subdivision severed or limited the easement, reiterating that appurtenant easements survive unless clearly abandoned or extinguished.

The Court recognized an implied easement by necessity over the Stephens parcel and that the required elements were satisfied: 1) **Unity of title:** before subdivision (both the McElroy and Stephens lots had been held by the one party); 2) **Continuous and apparent use**, evidenced by the dirt road historically providing access to the beach; and **Reasonable necessity**, since without access across the Stephens' property, the express easement to Seaweed Beach would be rendered effectively useless.

The Court stressed that implied easements are disfavored and will only be recognized when necessary to give effect to existing property rights. The Court declined to extend any rights across the Anthony or Lacroix properties. Easement burdens are construed narrowly, and the record did not support necessity over those parcels.

**Key Takeaways for Practitioners**

- **Express Easements Survive Subdivision**: An appurtenant easement granted in a deed remains enforceable through successive conveyances unless clearly extinguished.
- **Implied Easements Are Narrow but Available**: Rhode Island courts may recognize implied rights of way to give practical effect to an express easement that would otherwise be illusory. It is important to remember, however, that judicial determination is required to find the existence of an implied easement.
- **Chain of Title Analysis Is Critical**: Practitioners should carefully examine historic deeds, especially when subdivision separates dominant and servient estates.
- **Extrinsic Evidence May Inform Implied Rights**: While it cannot contradict unambiguous deed language, purchase agreements and historical use patterns may be considered in implied easement disputes.
- **Burden on Other Parcels Is Limited**: Easements will not be extended to additional neighboring parcels absent strict necessity.

The *McElroy* decision underscores the enduring nature of easement rights in Rhode Island property law and demonstrates the Court's willingness to balance strict deed interpretation with equitable principles to preserve the utility of long-standing property interests. For title and real estate practitioners, the case is a reminder to conduct thorough easement due diligence, particularly in subdivisions with historic rights of way. To read the full decision, follow this link: https://www.courts.ri.gov/Opinions/Supreme-23-249.pdf

## In Case you Missed It - Recently Issued Bulletins:

**Rate Increase for Massachusetts – Bulletin: MA2025002**

On September 5, 2025, Stewart Title Guaranty Company announced an increase in rates for Massachusetts policies. The rate change applies to both Standard ALTA Owner and Homeowner (a/k/a Enhanced Owner) policies of title insurance. These rates will be effective as of September 15, 2025; however, Stewart will honor previously quoted rates through October 31, 2025. Additionally, the issuance of a Closing Protection Letter to a party in the transaction now carries a fee of $35.00. Please note, however, the CPL fee is waived should the transaction not close. To review the complete bulletin, please follow the link above.

**Special Alert for Rhode Island – Special Alert: SA2025264**

On September 2, 2025, Stewart Title Guaranty Company issued a Special Alert for property located at Baker Road, Portsmouth, Rhode Island (Assessor's Parcel Lot 10, Assessor's Plat 16). To read the alert, please follow the link above. Prior to closing any transaction involving this property, you must receive approval from Stewart Legal Services.

## REBA Webinar - Managing MassHealth Liens – September 17, 2025

Tracie Kester, Associate Senior Underwriting Counsel at Stewart, will be presenting a webinar at 12 noon on Wednesday, September 17th on MassHealth liens. She will be joined by Julie M. Palmaccio, Senior Attorney at SKM Title & Closing Services, PC, and Todd E. Lutsky, a Partner at Cushing & Dolan PC. The panelists will discuss recently-adopted REBA Title Standard No. 86, which addresses MassHealth Liens and Notices of Claim, as well as the SJC's Mason and Kendall decisions. They will also offer practical advice for dealing with MassHealth when a property subject to a lien or claim is being sold, as well as some planning tips to avoid MassHealth liens. The webinar is open to all REBA members. To register, RSVP to Matt Zarrella at zarrella@reba.net.

Meet Our Team | Stewart Connecticut

Meet Our Team | Stewart Maine

Meet Our Team | Stewart Massachusetts

Meet Our Team | Stewart New Hampshire

Meet Our Team | Stewart Rhode Island

Meet Our Team | Stewart Vermont

**1-800-STEWART**

**www.stewart.com**



*This email was sent to your address because your email preferences are set to receive our updates.*

*unsubscribe*