



New England Regional Midweek Update
9/24/2025

Dear Stewart Partners,

With summer officially in the rearview mirror, and the leaves already beginning to change in the northern reaches of New England, we hope you all enjoy the remaining warm days and cool nights. In this week's Mid-Week Update, we cover easements in gross in Massachusetts as a follow up to an appurtenant easement article in August, real estate tax withholding requirements in Maine, and a few recent bulletins.

In addition, we are pleased to announce two new additions to the New England team. Please join us in welcoming Jamie Spaulding to our Maine team and Monica Barrera to our Connecticut team.



Massachusetts Easements in Gross By: Mark A. Jones, Esq.,
Associate Senior Underwriting Counsel – Massachusetts

The two main types of easements we deal with in real estate are appurtenant easements and easements in gross. Each of these has unique characteristics, legal implications, and aspects related to transferability. In my last article in August, I discussed Appurtenant Easements. In this article I will be discussing Easements in Gross.

Unless there is language to the contrary, an easement is presumed to be appurtenant to another estate and runs with the land. Unlike an appurtenant easement, an easement in gross can exist independently of a particular piece of land and can be assigned or inherited. The easement can be exclusive or non-exclusive and absent language to the contrary, the easement would be considered non-exclusive.

An example we often see of easements in gross are parking easements. As I'm sure you are aware, parking in the City of Boston is a challenge and deeded parking spaces come at a premium. We often review condominium parking space easements, and most of these are created as appurtenant easements that require ownership of a condominium unit. Other parking spaces can be owned independently of condominium unit ownership. Some of these easements can provide a general right to park in a garage and some will have specific parking stalls. All of these aspects must be analyzed when we are determining the rights the easement holder has and whether the easement is valid and insurable. Another example of an easement in gross is a utility company having the right to enter a property to service utilities at a home or business. Beach rights are also sometimes established by an easement in gross.

We are often asked to insure appurtenant easements and easements in gross. Insuring an easement is possible, but it is important to remember to run a full title search on the servient parcel and take exception for matters affecting title to that parcel. Insuring an easement in gross, however, does require underwriter approval.

The title search is important in order to determine whether the grant was valid, what might impact the easement, and to confirm nothing has caused the easement to be eliminated. For example, if the servient parcel granted an easement in gross, and at the time of the grant, the servient parcel was encumbered by a mortgage, if that mortgage holder didn't subordinate to the easement, and a foreclosure occurred, the easement could have been wiped out by the foreclosing lender. Also, in the example above a general right to park in a parking garage does not create an insurable interest in real estate. In order to insure a parking easement, the parking stall needs to be specifically described and typically must be shown on condominium floor plans.

Drafting considerations

Unlike appurtenant easements that run with the land, an easement in gross is a personal right. It grants a specific individual or entity the right to use another person's land for a particular purpose, but this right is not tied to any specific piece of land. Because of this, the drafter of the easement must determine the intent of the easement. If there is an intent that the easement shall run only to the particular person or entity, the grant should be only to that person or entity. Upon the death of the person or dissolution of the entity the easement in gross would typically terminate. If the intent is for the person or entity to be able to transfer the property, the drafter will want to add "successors, heirs and/or assigns" in the grantee clause. Additionally, the drafter will want to determine whether the intent is for an exclusive or non-exclusive easement. For example, if you were deeded a non-exclusive parking easement in Boston near Fenway Park you would surely be disappointed if you showed up with your family to see a Red Sox game and someone else was in your parking spot.

Virtual Underwriter dedicates an entire chapter to easements, which includes easements in gross as well as considerations for insuring such easements. To view this chapter, follow this link: [5.00 Easements And Easement Insurance | Virtual Underwriter](#)

As always, reach out to one of our underwriters if you have any questions. Also, mark your calendars for October 8, 2025, as I will be presenting a webinar that will include a full discussion on the different types of easements, how to insure them and other related issues regarding easements.



Maine Real Estate Tax Withholding for Nonresident Sellers By:
Zachary Greenfield, Esq., Maine State Counsel

Subject to limited exceptions described below, whenever a non-Maine resident sells Maine real estate, 36 M.R.S. § 5250-A requires the buyer to withhold 2.5% of gross sale proceeds and remit the same to Maine Revenue Services. This is not a penalty. Instead, it is an estimated tax payment designed to ensure that out of state sellers file Maine income tax returns. The buyer (or escrow agent) must send the withheld funds, along with a completed

Form REW-1-1040, Form REW-1-1041 or Form REW-1-1120, to Maine Revenue Services within 30 days of the closing. If the ultimate capital gains tax due is less than the amount withheld, the seller will be entitled to a refund.

Sellers may prove their residency, and thus the non-applicability of withholding, by executing residency affidavits. With respect to individual, estate, and trust sellers, the statute defines a Maine resident as one who “has established a domicile in the State as of the date of transfer of the Maine real property, or that was a resident for purposes of the previous income tax year, unless the individual, estate or trust has established a domicile outside of the State as of the date of transfer of the Maine real property.” Corporate sellers are considered Maine residents if they are “incorporated in the State or maintain a permanent place of business in the State” as of closing. Partnerships and limited liability companies are considered Maine residents if “at least 75% of [the] ownership interests” are held by Maine residents as of closing.

There are four exceptions to the withholding requirement for nonresident sellers. First, no withholding is required for sales of less than \$100,000.00. Second, a seller who demonstrates to Maine Revenue Services that they will owe little or no capital gains tax upon the sale qualify for an exemption certificate allowing for a full or partial reduction of the withholding amount. Third, certain sellers, including Maine and federal governmental entities, tax exempt organizations under Section 501 (a) of the Internal Revenue Code, and insurance companies or their subsidiaries exempt from Maine income taxes under 24-A M.R.S., § 1157 (5)(B)(1), are all exempt from the withholding requirement. Fourth, no withholding is required for foreclosure sales. This includes foreclosure deeds (deeds from foreclosing mortgagees to high bidders at public sales) and REO deeds (deeds from foreclosing mortgagees who were the high bidders at public sales to subsequent purchasers).

Although 36 M.R.S. § 5250-A places the liability for failure to withhold on buyers, it also imposes liability directly upon escrow agents who fail to provide written notice to buyers of the withholding requirements. According to section 9 of the statute, escrow agents that unreasonably fail to provide such notice are “liable for the withholding tax.” As such, it is imperative that escrow agents provide the required notice to buyers.

To facilitate the withholding process, the state has promulgated the following forms for use by escrow agents, buyers, and sellers:

[Form REW-4 – Notification to Buyer\(s\) of Withholding Tax Requirement](#)

[Form REW-2 – Residency Affidavit, Individual Transferor](#)

[Form REW-3 – Residency Affidavit of Entity Transferor](#)

[Form REW-5 – Request for Exemption or Reduction in Withholding](#)

The applicable statute, 36 M.R.S. § 5250-A, is available here: [36 M.R.S. § 5250-A](#)

Please do not hesitate to reach out to your Stewart underwriter if you have any questions about Maine’s real estate withholding rules or forms.



In Case you Missed It - Recently Issued Bulletins:

[Upcoming Changes to Federal Payments pursuant to Executive Order 14247 – Bulletin: SLS2025009](#)

On September 17, Stewart Title Guaranty Company issued a Bulletin alerting all trusted Stewart partners to upcoming changes to how the IRS will receive and disburse funds, including those related to FIRPTA and Federal Tax Liens. To review the complete Bulletin, please follow the link above.

[Special Alert for All Issuing Offices – Special Alert: SA2025278](#)

On September 18, Stewart Title Guaranty Company issued a Special Alert directed to all issuing offices nationwide. The alert identified individuals, as well as property in Kentucky, Ohio, and Arkansas. To read the Special Alert, please follow the link above. Prior to closing any transactions involving the identified parties or property, you must receive approval from Stewart Legal Services.

[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 Special Alert, please follow the link above. Prior to closing any transaction involving this property, you must receive approval from Stewart Legal Services.

[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 the 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.



Stewart Welcomes Jamie Spaulding and Monica Barrera

Stewart's team in New England is growing. We are pleased to welcome both Jamie and Monica to Stewart.

Jamie joins our Maine team and will be providing sales and underwriting support to our Maine agents. Jamie's background as a practicing attorney in Maine who has handled both title litigation and real estate transactional work, makes him uniquely suited to support our agency base in Maine. Jamie can be reached at jamie.spaulding@stewart.com

Monica joins our Connecticut sales team as an Agency Sales Representative. Monica will be supporting our Connecticut agents while strengthening and growing Stewart's valued partnerships with attorney agents across the state. Monica brings a wealth of experience to Stewart, and we are excited about this addition to our team. Monica can be reached at monica.barrera@stewart.com



Upcoming Educational Opportunities

Please join Mark Jones, Associate Senior Underwriting Counsel, on Wednesday, October 8, 2025 at 11 A.M. for the next installment of our talk title series. In this webinar, Attorney Jones will discuss the different types of easements in Massachusetts, including how to insure beneficial easements and how to distinguish an appurtenant easement from an easement in gross. To register, click here: [Register Here](#)



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