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New England Regional Midweek Update
10/28/2026

Dear Stewart Partners:

With Halloween just around the corner, this week's Mid-Week Update takes a look at a few title issues that can come back to haunt even the most careful title professional. In Connecticut, we explore whether a claimed easement can rise from the shadows of historical use when it is nowhere to be found in the land records. Then, we travel north to Maine, where ancient undischarged mortgages and defects lurking in older recorded instruments may not be quite as frightening as they first appear.

Fortunately, when these issues creep into your title search, knowing the applicable law and title standards can help determine whether you are facing a genuine title problem or simply a ghost from the past.

We also bring you Halloween greetings from Stewart's Trumbull, Connecticut office, where they're ready to take a bite out of your title problems! And as a final treat, a bit of history about witches, records, and righting a historical wrong. Scroll down to read more.

Implied Easements and the Necessity Requirement: Lessons from LSL, LLC v. The Kristin Lyons Revocable Trust By: Frank Cammarano, Esq., Connecticut Underwriting Counsel

In LSL, LLC v. The Kristin Lyons Revocable Trust, 241 Conn. App. 32 (2026), the Connecticut Appellate Court addressed the requirements necessary to establish an easement by implication based on prior use. The court affirmed summary judgment in favor of the servient estate owner, holding that a claimant must prove not only the grantor's intent to create an easement but also that the easement is reasonably necessary for the use and enjoyment of the dominant estate. The decision reinforces Connecticut's long-standing reluctance to imply easements absent clear evidence of necessity.

The dispute involved neighboring waterfront properties in Madison, Connecticut. The plaintiffs, LSL, LLC and its members, owned approximately 22 acres of undeveloped shoreline property containing a private beach known as "Mud Beach." The defendants, Catherine Carrabba, both individually and as trustee of the Kristin Lyons Revocable Trust, and Stephen Carrabba, owned an adjacent parcel. Both properties had once been part of a larger tract owned by the Hotchkiss family before being severed into separate parcels. The defendants claimed that, historically, occupants of their property crossed what is now the plaintiffs' land to access Mud Beach and to reach the northern side of a barn located on the defendants' property. They asserted that these uses created an implied easement

benefiting their property. None of the deeds conveying the parcels after severance expressly granted such easement rights, and surveys of the property likewise failed to depict any easements. When the plaintiffs sought to prevent the defendants from crossing their property, the defendants filed counterclaims seeking declarations that easements by implication existed for both beach access and access to the barn area.

The plaintiffs moved for summary judgment on the counterclaims. The trial court initially denied the motion, concluding that the central inquiry was the parties' intent and that reasonable necessity was not an independent requirement. Upon the plaintiffs' motion for re-argument, however, the court revisited the issue and concluded that reasonable necessity is an essential element of an easement by implication based on prior use. Finding no genuine issue of material fact regarding necessity, the court rendered summary judgment for the plaintiffs. The defendants appealed.

The issue before the Appellate Court was whether, under Connecticut law, a party claiming an easement by implication based on prior use must prove that the easement is reasonably necessary for the use and enjoyment of the dominant estate, in addition to proving the grantor's intent.

The Appellate Court held that reasonable necessity is an essential element of an implied easement based on prior use where no recorded instrument expressly establishes the easement and there is no claim of absolute necessity. A claimant must establish both: the grantor intended the easement at the time of severance; and the easement is reasonably necessary for the use and normal enjoyment of the dominant estate. Because the defendants failed to produce evidence creating a factual dispute regarding reasonable necessity, summary judgment was proper.

Connecticut disfavors implied easements
The court emphasized that implied easements are disfavored because Connecticut seeks to promote certainty and reliance on the land records. Accordingly, courts recognize implied easements only in limited circumstances. The court relied on longstanding precedent, including Rischall v. Bauchmann and Utay v. G.C.S. Realty, LLC, which identify both intent and reasonable necessity as elements of an implied easement.

Necessity remains a required element
The defendants argued that intent alone should suffice and relied heavily on language from Cheshire Land Trust, LLC v. Casey. The Appellate Court rejected that argument, explaining that Cheshire Land Trust involved dicta and did not eliminate the necessity requirement. The court distinguished cases such as McBurney v. Cirillo, where recorded maps and plans themselves supported implied rights. In cases lacking such documentary evidence, necessity remains an independent requirement.

Alternative access defeated necessity
The court found no evidence that crossing the plaintiffs' property was reasonably necessary. Regarding the barn area, the defendants could access the barn entirely from their own property, even if access was less convenient than traversing the plaintiffs' land. Convenience alone is insufficient. Regarding Mud Beach, the defendants offered no evidence that beach access was necessary to enjoy their property, and they had access to a nearby public beach. Because reasonable alternatives existed, any claimed easement lacked the degree of necessity required under Connecticut law. The court reiterated that an

easement by implication does not arise from mere convenience or economic benefit. Rather, it must alleviate a significant burden that would otherwise interfere with the normal use and enjoyment of the dominant estate.

Significance

This decision is an important reminder that, in Connecticut, historical use alone does not create an implied easement. Even where there is evidence suggesting longstanding use and possible intent, a claimant must still prove that the easement is reasonably necessary to the use and normal enjoyment of the property. If reasonable alternative access exists, courts are unlikely to imply easement rights not reflected in the land records.

For title professionals and real estate practitioners, the case underscores Connecticut's strong preference for express easements over implied rights and reinforces the limited circumstances under which implied easements will be recognized. The holding strengthens the argument against recognizing unrecorded claims of access based solely on historical use. When no deed, survey, map, or recorded instrument evidences the claimed easement, and alternative means of access exist, Connecticut courts will require a compelling showing of reasonable necessity before imposing an implied easement on the servient estate.

Special Rules in Maine for Old Mortgages and Various Title Defects By: Zachary Greenfield, Esq., Maine State Counsel

In Maine, as in most states, title examiners frequently see the same kinds of title defects that, although presenting technical marketability problems, present limited real-world risk. Common examples are ancient mortgages for which no discharge appears in the registry, defective powers of attorney, defective notary acknowledgements, and defective mortgage assignments and discharges. Fortunately, both Maine law and title standards provide solutions to many of these problems.

When Can an Old, Undischarged Mortgage Be Disregarded in Maine?

An old mortgage with no recorded discharge does not necessarily remain an encumbrance forever. Maine Title Standard No. 608 lays out the circumstances under which a title examiner may consider an undischarged mortgage as no longer encumbering the property. Key to the inquiry is determining if the mortgage states a date of maturity.

For a mortgage that states a maturity date or other time for performance, Standard 608 provides that the mortgage generally may be disregarded 20 years after that date, provided there is no recorded instrument recognizing the mortgage's continuing validity and the examiner has no knowledge of a payment or other indication of a continuing claim during that period. If there is a later recorded recognition or known payment, the 20-year period runs from that later event.

For a mortgage that does not state a maturity date, Standard 608 requires a longer period. Generally, the mortgage may be disregarded 50 years after its execution, or 60 years in the case of certain railroad mortgages, assuming there is no intervening recorded recognition, known payment, or other indication of a continuing claim. If such later activity exists, the

mortgage generally should not be disregarded until 20 years after that later recognition or payment.

The foundation for Standard 608 is grounded in Maine's statutory treatment of aged, undischarged mortgages, including 14 M.R.S. § 6104, et seq., and in Maine's statutes of limitations. The practical takeaway for Maine title professionals is that the absence of a discharge does not automatically mean that a decades-old mortgage must continue as a title exception. The examiner should determine whether the mortgage contains a maturity date, calculate the appropriate period under Standard 608, and carefully review the intervening record for evidence that the mortgage continued to be recognized.

Maine's Validation of Defects Statutes

Maine title examiners frequently encounter old deeds, mortgages, discharges, powers of attorney, and other recorded instruments containing technical defects. Fortunately, Maine's Validation of Defects statutes, 33 M.R.S. §§ 351–353-B, cure a number of these defects by operation of law. For title insurance professionals, these statutes are important because an apparent defect in the record may not require a corrective instrument or title exception once the statutory requirements have been satisfied.

One of the most useful provisions is 33 M.R.S. § 352, which validates certain recorded instruments after they have been on record for at least two years, even where the notary acknowledgment is incomplete or defective, no acknowledgment appears of record, or no acknowledgment was taken. The statute also addresses certain defects in the recording process, including a record that fails to disclose when the instrument was received for recording or that lacks the signature of the register of deeds or other authorized recording officer.

33 M.R.S. § 353-A resolves additional defects including, among other things, improperly drafted mortgage discharges and assignments that have been on record for two years, so long as the instrument was intended to discharge or assign the mortgage and fully identifies the mortgage involved. It also provides substantial protection for deeds and other instruments executed by corporations and other legal entities where defects exist in the entity's organization, authority, execution, or identification of the signer's capacity.

For title professionals, the practical lesson is straightforward: a defect appearing on the face of a recorded instrument should not automatically result in a title requirement or exception. Before requiring a corrective deed, confirmatory instrument, affidavit, or other cure, determine whether Maine's Validation of Defects statutes have already cured the problem through the passage of time. Paying particular attention to the applicable statutory waiting period can prevent unnecessary curative work while allowing the examiner to rely confidently on Maine's record title.

As always, regardless of whether you are presented with an ancient mortgage for which no discharge appears of records, or a defective notary acknowledgement, power of attorney, discharge, or assignment, we encourage you to contact your Stewart underwriter to review how to proceed. Even if there is no directly relevant statute or title standard resolving the issue, we can often find a creative solution to allow you to proceed with the transaction.

The Town Clerk's Notebook: Connecticut's First Witch Trial Victim and the Record That Kept Her Name By: Amy D. Arcano, Senior Underwriter - Connecticut

Those of us who work with the land records know that a single line, written by the right person at the right time, can carry a lot of weight. With Halloween this week, here is a piece of Connecticut history where one line carried a person's name across almost four centuries.

One Line Inside the Cover

Matthew Grant was Windsor's first surveyor and later its second town clerk. His notebook, now held by the Connecticut State Archives, holds sermon notes, family records, and rules for measuring land. Inside the cover is a short list of people who were hanged. The first entry reads: *"May 26, 47 Alse Young was hanged."*

Alse (Alice) Young of Windsor is the first person on record executed for witchcraft in the American colonies, 45 years before the Salem executions of 1692. She was hanged in Hartford, at a site traditionally placed near the Old State House. No record of her trial or the charge against her has been identified. We do not know what she was accused of, who accused her, or what she said in her own defense. The Windsor Historical Society links her case to the influenza epidemic that hit Windsor hard in 1647, but the reason she was singled out is lost. What we do have is her name, and we have it because a record keeper wrote it down.

She Was Not Alone

Connecticut made witchcraft a capital crime in 1642, and the law was carried into the Code of 1650. In all, the colonies of Connecticut and New Haven indicted at least 34 people, convicted 12, and executed 11, nine women and two men, with the last executions in 1663. These were neighbors, spouses, and parents. Lydia Gilbert, also of Windsor, was convicted in 1654 of bewitching a gun that killed a man during militia practice three years earlier. The soldier who actually fired it had his fine refunded. Gilbert is generally believed to have been executed, although no execution record has been found.

A Higher Standard of Proof

What finally slowed the executions was a question you will recognize: what evidence is enough? On October 12, 1669, a jury convicted Katherine Harrison of Wethersfield, but the court hesitated to carry out the verdict and asked a panel of ministers for advice on the rules of evidence. Most crimes required two witnesses to convict, while witchcraft required only one. The ministers reasoned that one witness might be deceived but two would not be, and the standard of proof went up. Harrison was released on the understanding that she would pay a fine and leave Wethersfield. Witchcraft trials continued as late as 1697, but no one else was executed.

Setting the Record Straight

For years, descendants and local historians worked to clear these names. A 2008 resolution died in committee, a 2012 request to Governor Malloy for a proclamation did not succeed,

and appeals to the Board of Pardons and Paroles failed. Windsor did not wait. In February 2017, its Town Council unanimously passed a resolution clearing Alice Young and Lydia Gilbert.

The state followed in 2023 with House Joint Resolution 34. The House adopted it 121 to 30 on May 10, and the Senate adopted it 33 to 1 on May 25, the day before the anniversary of Alse Young's hanging. The final text provides that the twelve convicted "are absolved of all crimes of witchcraft and familiarities with the devil," acknowledges that "misogyny played a large part in the trials," and restores the good standing of everyone who was accused. It is a legislative resolution rather than a pardon, so it needed no signature from the governor. As Senator John Kissel of Enfield put it during the debate, "Even if they were witches, they were not tried appropriately or properly."

Why It Stays With Us

Records outlast the people who make them. Grant could not have known that his short entry would be how the world remembers Alse Young, or that it would help Connecticut correct its own record 376 years later. You can view his notebook online through the Connecticut State Library, and the memorial bricks for Young and Gilbert sit beneath the flagpole near Windsor Town Hall. If you are in Windsor this fall, they are worth a moment. Happy Halloween.

Sources

1. Connecticut State Library, "Colonial Records & Topics: Matthew Grant's Diary," and the digitized Matthew Grant Diary, Connecticut Digital Archive.
2. Connecticut General Assembly, H.J. No. 34 (2023), Bill Status and History; File No. 782, as amended by House Amendment Schedule A.
3. Connecticut Judicial Branch Law Library Services, "Witches and Witchcraft: The First Person Executed in the Colonies" and "Katherine Harrison and the Adoption of Rules of Evidence."
4. Windsor Historical Society, "Two of Windsor: Accused and Exonerated of Witchcraft" and "Alice Young and Lydia Gilbert Memorial Bricks."
5. John M. Taylor, The Witchcraft Delusion in Colonial Connecticut, 1647–1697 (Grafton Press, 1908).
6. Windsor Patch, Feb. 13, 2017; CT Mirror, May 25, 2023; Associated Press, May 26, 2023.

Happy Halloween from Stewart Title!

Our Trumbull, Connecticut office hopes you find nothing but title treats for Halloween! From left to right: David Piechota, Ericka L. Minggio, Monica Barrera, and David Baghdady.



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