

Dear Stewart Partners,

We hope everyone is enduring the cold temperatures and maybe enjoying some fun winter activities. In this week's Mid-Week Update, we discuss executing documents under a Power of Attorney in Massachusetts. We are also providing a review of a recent Rhode Island Superior Court decision on acquiescence, and information about Stewart's FinCEN reporting service.



Using Power of Attorneys in Massachusetts By: Jutta R. Deeney, Esq., New England Regional Underwriting Counsel – Senior Underwriter

A Power of Attorney is a legal document wherein an individual, called the "Principal," appoints someone, called the "Agent," to act on the individual's behalf. A Power of Attorney can be a useful tool when the Principal is unavailable or is unable to execute documents in a real estate transaction. We are generally able to authorize the issuance of a policy of title insurance in a transaction where documents are executed using a Power of Attorney when certain conditions are met. This article addresses the key questions that need to be evaluated and considered prior to insuring:

1. Is the power of attorney durable? A durable Power of Attorney allows the Agent to act even if the Principal has become incapacitated. If the Power of Attorney is not durable, the Agent's power ceases upon the incapacity of the Principal. The Power of Attorney document must specifically state that it is durable or that the power granted to the Agent continues in the event of incapacity or incompetency of the Principal.
2. Does the Power of Attorney authorize the action to be taken by the Agent? In the case of the sale of real estate, the Power of Attorney must provide a specific authorization to sell or convey real property. If the Power of Attorney only authorizes the Agent to take actions involving personal property, this would be problematic.
3. Is the original Power of Attorney in possession of the Agent or the Principal and is it in recordable form? In order to insure a transaction where a Power of Attorney is being used, the original Power of Attorney must be recorded with the appropriate Registry of Deeds. In addition, the Power of Attorney must be properly acknowledged, in conformity with Massachusetts law, which requires that the Principal signed the Power of Attorney voluntarily or as their free act and deed.
4. Is the Principal still alive? A Power of Attorney cannot be used if the Principal is no longer alive. Generally, to establish this fact, the Agent will be required to provide an affidavit reciting that the Principal has not died.

5. Is the Agent's conduct violating any fiduciary duty? An Agent under a Power of Attorney is a fiduciary and therefore has to conduct themselves with the highest legal and ethical standards. For this reason, as a general rule, an Agent may not use a Power of Attorney to convey property to themselves or family members or convey property for nominal consideration. There may be exceptions to this general duty, however, the Power of Attorney would need to specifically include actions the Agent can take that would normally be prohibited under general fiduciary principals.
6. Is the Agent complying with all the terms of the Power of Attorney? It is critical that the entirety of the Power of Attorney be reviewed to confirm compliance with all of its terms. Sometimes a Principal will establish a termination date of the Power of Attorney, or place conditions on selling real estate. Further, if the Power of Attorney is a so-called "springing" Power of Attorney, meaning that the Power of Attorney does not immediately grant any powers to the Agent, rather only upon the occurrence of a specific event, it is necessary to establish in the record that the event occurred.
7. Why is the Power of Attorney being used? This is a question we, as the title insurer, always ask. Given that there is an increased risk of fraud when a Power of Attorney is being used, it is important for us to understand why it is necessary that the Power of Attorney be used to facilitate the transaction. As part of the review, one should always compare the signature of the Principal on the Power of Attorney with their signature on a previously recorded document.

Stewart's Virtual Underwriter has a general section on Powers of Attorneys which provides useful information. To view this chapter, follow this link: [15.52 Powers Of Attorney | Virtual Underwriter](#)

As always, should you have any questions about the use of a Power of Attorney in a current transaction or in a past transaction, don't hesitate to reach out to your underwriting team at Stewart.



Boundary by Acquiescence in Rhode Island By: Eileen C. O'Shaughnessy, Rhode Island Underwriting Counsel

In a recent Superior Court case, a Rhode Island court rendered a decision on an action to quiet title to a disputed strip of land under theories of adverse possession and boundary by acquiescence. In Superior Court case number PC-2022-04877, Walter S. Felag, Jr., et al v. Patriarca, et al, while they did not find that plaintiffs had established title by adverse possession, the court found that the plaintiffs' tree line was meant to be the boundary line between the parties' properties and that title in that boundary line was established in the plaintiffs.

Acquiescence occurs when neighboring landowners mutually recognize and accept a visible boundary (like a fence, wall, or hedgerow) as the true property line for a long period of time. Over time, that mutually accepted boundary can become the legally enforceable property line.

The requirements to establish a boundary by acquiescence in Rhode Island include three elements: (1) a clearly visible boundary marker, such as a fence, stone wall, tree line or

driveway edge must exist; (2) both parties must have agreed to that physical boundary marker; and (3) the recognition of the boundary line must last for at least ten years.

The plaintiffs in this case had owned their property since 1980, when they purchased it from the developer. In 1983, plaintiffs planted a line of hemlock trees along the abutting owners' driveway, after informing the neighbors that they intended the line of trees to represent the boundary line between the two properties. Both owners agreed that the line would serve as the boundary. From that time through 2022, plaintiffs maintained the tree area with no objection from any of the owners throughout those years.

Unlike adverse possession, acquiescence does not require hostility or exclusive possession. The key factor is mutual acceptance of the boundary. In this case, the court said the facts satisfied all three elements to establish a boundary by acquiescence. It is important to remember, like adverse possession, a finding by the court that all elements establishing acquiescence and a judgment determining the boundary line is required in order to establish the boundary line from a title perspective.

To read the court's decision, follow this link: [Superior-PC-2022-04877.pdf](#)



Stewart Out and About

Northeast Mortgage Summit at Foxwoods

Many members of Stewart's Southern New England agency team will be at the Northeast Mortgage Summit, which takes place at Foxwoods Casino in Mashantucket, CT on February 25 through February 26, 2026. Stewart is hosting a cocktail party on the evening of February 25 – if you're planning to attend the Summit, please contact your Agency Sales Representative for more details.

The Summit is a regional mortgage industry conference and trade show produced by the Connecticut, Massachusetts, and Rhode Island Mortgage Bankers Associations designed to bring together hundreds of mortgage industry professionals from across New England — including lenders, mortgage bankers, brokers, appraisers, attorneys, insurers, technology experts and more. For information on the Summit and how to register you can view their website here: <https://csuite-events.com/northeast-mortgage-summit-home/>



FinCEN Reporting Deadline Looming; We Can Help

As set forth in [Bulletin SLS 2026002](#) issued on February 12, 2026, the new FinCEN Anti-Money Laundering (AML) rule takes effect **March 1, 2026**. This regulation introduces new reporting requirements for non-financed residential property transfers to legal entities or trusts, and it applies nationwide. The definition of residential property is expansive and includes certain vacant and commercial properties. Similarly, the definition of non-financed includes more than just cash transactions.

In anticipation of the looming deadline, and to assist our agents with the complexities of the rule, Stewart has created a FinCEN reporting service that handles the required reporting from start to finish. We recently held a webinar to show how the service works, and you can view a recording of the webinar [here](#). You can also learn more about the new rule and the reporting service at <https://www.stewart.com/en/fincen-aml>.



Excellence in Action

Stewart recently announced its annual President's Club award winners for 2026. These awards recognize the achievements of the Company's top 18 agency representatives and managers for the highest year-over-year increases in market share, revenue, and other metrics. We are pleased to announce that several New England personnel were recognized this year for this extraordinary achievement. Please join us in congratulating **Zachary Greenfield**, Maine State Counsel and Manager, **Tiziano Doto**, Massachusetts and Rhode Island State Manager, and **Laurie Goodwin**, Massachusetts Agency Sales Representative.

This achievement wouldn't be possible without the loyal partnership of our valued Stewart agents and we thank you!



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