



Dear Stewart Partners,

As the snow continues to pile up in the land of snow and ice, we hope you are staying warm and safe. In this week's Mid-Week Update, we provide a refresher on Connecticut's Validating Act, review a recent Supreme Judicial Court of Maine decision involving waterfront recreational easement rights, and provide yet another reminder of the impending mandatory FinCEN reporting requirements. We also provide a link to a recent podcast about changes to Maine's tax lien foreclosure statute.

Lastly, if you plan to attend the Northeast Mortgage Summit at Foxwoods today, connect with the Stewart team. For details, reach out to your sales representative.



**The Connecticut Validating Act – a Refresher** By: David Veleber, Esq., Connecticut Underwriting Counsel

We often receive calls from agents regarding defects in deeds or other documents involving issues such as missing witnesses, bad acknowledgments, self-dealing, or a lack of stated authority to convey. Thankfully, Connecticut has a Validating Act to help cure some of these issues and help establish marketability of title.

Prior to 1997, there was a biennial adoption of a Special Validating Act setting forth various "fixes" for conveyances that had technical or procedural mistakes affecting marketability of title, but which did not create substantive rights where none existed before. The acts, when adopted, generally became effective upon passage and operated retroactively in that their curative effect related to instruments recorded prior to the date of the act, i.e., Spec. Act 99-7 adopted June 3, 1999, validated instruments recorded prior to Jan. 1, 1999.

Effective July 1, 2000, Conn. Gen. Statute (CGS) 47-36aa was enacted. The statute created a permanent Validating Act covering numerous conveyancing defects and it's extremely helpful for the practitioner and title insurers. The saving provisions of the Validating Act generally provide for validation of an instrument with the enumerated defect, provided it has been of record for at least two years with no action challenging the same. There are some exceptions and certain defects have a longer cure or waiting period.

Of particular application for common defects are the following sections of CGS 47-36aa:

(a) Conveyancing Defects: (1 and 2) - the instrument in question contains a defective acknowledgement or no acknowledgement or one witness only or no witnesses, will be validated if not challenged within two years after recording.

(b) Defect with respect to a power of attorney - (2) an instrument executed pursuant to a power of attorney, but the power of attorney is not recorded in the land records where the instrument is recorded, will be validated fifteen (15) years after recording, unless (A) an action is commenced to avoid and set aside such instrument and a notice of lis pendens is recorded in the land records of the town or towns where the instrument is recorded within fifteen years from the date of recording of such instrument, or (B) such instrument fails to state the consideration reflecting fair market value.

This lack of consideration or use of nominal consideration occurs frequently when property is conveyed to a family member. This is an issue because as a general rule nominal consideration transfers would violate the fiduciary duty of an agent under a power of attorney.

(c) Defect with respect to a conveyance where a fiduciary conveyed to themselves (self-dealing), will be validated if not challenged, ten (10) years after date of recording. It is important to note, however, that this situation may be cured earlier per Connecticut Standard of Title 6.5 if record evidence of the fiduciary's authority to self-deal is apparent on the land records.

A separate validating statute was adopted in 2016 and codified as CGS 47-36bb relating to transfers into a trust rather than a trustee of a trust, as previously a trust was deemed an entity not capable of holding title.

The Validating Act is worthy of review when a title search reveals any type of defect that could possibly be cured by a section of the Act. To view the statute in its entirety, please follow this link: [https://www.cga.ct.gov/current/pub/chap\\_821b.htm](https://www.cga.ct.gov/current/pub/chap_821b.htm)



**New Maine Case on Waterfront Property Rights; Implied Easement by Subdivision** By: Zachary Greenfield, Maine State Counsel

On January 13, 2026, Maine's Supreme Judicial Court issued an opinion in the case of Tappen v. Hill, 2026 ME 1, continuing its recent line of cases involving the rights of upland abutters and the public to make use of the intertidal zone.

The Tappens and the Hills own property in Phippsburg, Maine, in the Popham Beach Subdivision, which was originally laid out by subdivision plan recorded in the Sagadahoc County Registry of Deeds in 1893. The Tappens' lots abut that portion of the intertidal zone depicted on the plan as "Seawall Beach." The Hills' lots are further inland. For many years, the Hills have used Seawall Beach for recreational purposes. Neither the recorded plan nor the recorded deeds made any express reference to the rights of lot owners to use Seawall Beach for recreational purposes. The Tappens objected to the Hills' use of Seawall Beach and, in 2021, obtained a release deed for Seawall Beach from the successor to the original developer.

In 2022, the Tappens sued the Hills seeking a declaratory judgment affirming the Tappens' ownership of Seawall Beach and enjoining the Hills from using it for recreational purposes. The Hills filed a counterclaim alleging, among other things, that they had an easement by implication to use Seawall Beach for recreational purposes. Following a bench trial, the Maine Superior Court (Business and Consumer Docket) entered judgment in favor of the Hills on their implied easement claims. The Tappens appealed to the Maine Supreme Judicial Court.

On appeal, the Maine Supreme Judicial Court explained that extrinsic evidence of the intent of the grantor is admissible and relevant only when the language of the deed or plan is ambiguous. Here, the Hills' deed was silent as to the use of Seawall Beach, but the plan's depiction of Seawall Beach as being separate from the individual lots created the implication that the developer intended to enhance the value of the lots by benefiting them with appurtenant recreational easements to use Seawall Beach. Accordingly, the Court affirmed the trial court judgment that the Hills had an implied easement to use Seawall Beach for recreational purposes. To read the decision, follow this link: [Tappen v. Hill, 2026 ME 1](#).

When insuring title to properties abutting water bodies, or affected by easements relating to water bodies or the riparian zone, proceeding with caution is very important. Virtual Underwriter contains a section in its Underwriting Manual on water related topics, which can be accessed through this link: [Underwriting Manual | Virtual Underwriter](#) and common water related exceptions can be accessed through this link: [National Exceptions Manual | Virtual Underwriter](#). We encourage you to familiarize yourself with Virtual Underwriter's underwriting guidelines and exceptions for these matters, and to contact your Stewart underwriter with any questions.



**Yet Another Reminder about Mandatory FinCEN Reporting – It's less than a week away!**

Effective March 1, 2026, FinCEN reporting will be required for every conveyance of residential property (including vacant land when the intent is to build a residence) in which the grantee is a corporation, limited liability company, some types of trusts, and other entities when the transaction does not involve institutional mortgage financing. Although this list is not exclusive, reporting will be required for the following transactions:

1. Residential cash sales to LLCs and corporations;
2. Residential hard money financed sales to LLCs and corporations; and
3. Residential "deed-only" conveyances to LLCs and corporations even if there's no consideration paid.

The penalties for non-compliance are significant, and can run to title companies, lawyers, deed preparers, etc. To alleviate the administrative burden created by the new reporting requirement, Stewart has created a new service company, FinCEN Reporting Services (FRS). There's no cost to sign up with FRS.

To learn more about FRS, please attend one of the two daily Zoom calls at the following link:

10am EST – [https://stewart.zoom.us/webinar/register/WN\\_qf6OQy7LSzqwjZbinbDixA](https://stewart.zoom.us/webinar/register/WN_qf6OQy7LSzqwjZbinbDixA)

3pm EST - [https://stewart.zoom.us/webinar/register/WN\\_7v1bqUlfQwWghmNMFELqPg](https://stewart.zoom.us/webinar/register/WN_7v1bqUlfQwWghmNMFELqPg)

Additional information is available at our website: <https://www.stewart.com/en/fincen-aml>



### **Maine State Counsel Podcast Appearance**

On February 11, 2026, a new episode of real estate industry podcast – Behind The Title – was released. In that episode, the host interviewed Stewart’s Maine State Counsel Zachary Greenfield about the background of Maine’s tax title foreclosure law, some recent changes to that law in response to the U.S. Supreme Court’s 2023 landmark decision in Tyler v. Hennepin County, No. 22-166, and some practical considerations for title companies, investors, and real estate brokers. The episode, which runs for approximately 35 minutes, is available on Apple Podcasts, Spotify, and other popular podcast apps.



### **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/>



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