New England Regional Midweek Update
3/11/2026

Dear Stewart Partners,

Spring is in the air! We hope the warmer temperature and longer days have helped to alleviate the loss of sleep with the time change. In this Midweek Update, we provide a discussion of a recent New Hampshire Supreme Court opinion involving implied and prescriptive easements related to private roadways and common scheme developments. In addition, we are continuing our discussion of The Marketable Record Title Act in Connecticut.

For those of you in Massachusetts, the Massachusetts Agency and Underwriting team will be out and about hosting a number of happy hour events across Massachusetts in the coming weeks. Our first event is Wednesday of next week in Braintree. To register for this or any one of our other happy hours, use the link below.

Lastly, in case you missed it, Stewart issued a Bulletin relative to insuring sales out of bankruptcy and a Special Alert for property in New Hampshire. To access these recently published items, follow the links below.

Recent New Hampshire Case on Rights to Private Roadways and Beach Areas; Implied and Prescriptive Easements by: Michelle Radie-Coffin, NH State Counsel

On March 3, 2026, the New Hampshire Supreme Court issued an opinion in the case of Martin v. Far Echo Harbor Club, 2026 N.H. 9. The Court's analysis centered on the language of the historical conveyances and the legal principles governing the creation and enforcement of property interests.

The dispute involves neighboring parcels of land in Moultonborough, New Hampshire, near Lake Winnipesaukee. The plaintiff, Donald J. Martin, owns Lot 3, which abuts Park Lane, a private road owned by the defendant. The defendant, Far Echo Harbor Club, Inc., owns Park Lane, other roadways, and a lakefront beach area (Lot 200), which is reserved for its members' use. Both parties' properties originate from a 1959 subdivision. In 1972, Lot 300 shown on the 1959 subdivision plan was further subdivided into new lots, including Lot 3. Lot 3's deed references the 1972 subdivision plan, which shows Park Lane and Far Echo Road forming its boundaries. However, unlike earlier deeds conveying subdivision lots, the 1972 deed conveying Lot 3 to its first purchaser did not grant rights to use the subdivision's roads or beach area. Subsequent owners, including the plaintiff's predecessors, were

consistently informed by the defendant that Lot 3 did not have beach or common-area rights.

After purchasing Lot 3 in 2018, the plaintiff filed a petition to quiet title, claiming that Lot 3 has rights, implied or prescriptive, to use subdivision roadways and the lakefront beach area (Lot 200). The trial court granted summary judgment to the defendant, ruling that Lot 3 was not part of the subdivision's common-benefit scheme and that no evidence supported a prescriptive easement. The plaintiff's motion for reconsideration was denied, and an appeal was filed with the New Hampshire Supreme Court.

On appeal, the Court first addressed the issue of implied easements over the two roadways abutting Lot 3. Here, the court reversed the lower court's ruling by relying on established New Hampshire law that when a deed incorporates a recorded subdivision plan, and that plan depicts roadways bordering or serving the conveyed lot, the law generally recognizes an implied easement over those ways as a matter of law.

In its opinion, the Court noted that Lot 3's deed referenced the 1972 subdivision plan. The plan shows Park Lane and Far Echo Road as the boundaries of Lot 3. Because of this, the Court held that even though the deed conveying Lot 3 did not expressly grant roadway rights, Lot 3 automatically carries implied rights to use these roads because the deed description referenced the 1972 plan. The Court found that the plan's depiction of Park Lane and Far Echo Road as boundary lines meant the grantor intended Lot 3 to be accessed via those roads. Thus, even though the deed was silent, the plan's incorporation created the easements. The Court held that Lot 3 had easements "*as a matter of law*" because the plan showed those roads and the deed incorporated the plan.

As to the plaintiff's claim of implied easements over the other roads and the beach area (Lot 200), or in the alternative, the claim of prescriptive easements over both, the Court affirmed the lower court's summary judgement ruling in favor of the defendant, Far Echo Harbor Club. Here the Court ruled that no implied easement existed for other roadways or the beach (Lot 200). The Court reasoned that the other roads were not referenced in the deed to Lot 3 and the plan depicts only Park Lane and Far Echo Road as boundaries. The implied-easement doctrine does not extend beyond what is shown on the plan and incorporated into the deed.

The Court also found no evidence that Lot 3 was intended to be part of the Far Echo Harbor Club's common-benefit scheme. Earlier lots had expressly granted beach rights, but Lot 3's deed did not, and there was no reference to the lakefront beach area (Lot 200) on the 1972 plan. Without that, no implied easement in the beach area could arise.

In addressing the plaintiff's claim that a prescriptive right existed in the other roadways and the beach area, the Court agreed with the trial court's holding that the plaintiff did not show sufficient evidence to prove 20 years of adverse, continuous, uninterrupted, and notorious use of the property. In the absence of such evidence, there was no basis for finding 20 years of prescriptive use. To read the case, follow this link: Martin v. Far Echo Harbor Club

Of notable interest, but too early to call, is House Bill 1135. If passed, this bill would prohibit the acquisition of prescriptive rights in private roads through adverse use. The bill has passed the House and is currently in a Senate standing committee. We will be sure to provide an update to this bill as well as other title industry-related bills in future Midweek Updates.

The Connecticut Marketable Record Title Act: Connecticut General Statutes §§ 47-33b through 47-33l By: David M. Piechota, Esq., Connecticut Underwriting Counsel

Connecticut enacted the Marketable Record Title Act (MRTA) to improve and simplify the conveyancing of real property by setting a clear standard for title marketability. In this installment, we focus on C.G.S. **§§** 47-33f through 47-33g.

The MRTA (the "Act") operates by extinguishing defects, claims, and interests that arose prior to a designated forty-year period, except for those specific interests preserved under the terms of the Act. A Marketable Record Title remains subject to pre-root-of-title interests or claims that are preserved and kept effective by the timely recording of a proper statutory notice.

Sec. 47-33f. Notice of claim filed within forty-year period. (a) Any person claiming an interest of any kind in land may preserve and keep effective that interest by recording, during the forty-year period immediately following the effective date of the root of title of the person whose record title would otherwise be marketable, a notice in writing, duly verified by oath, setting forth the nature of the claim. No disability or lack of knowledge of any kind on the part of anyone suspends the running of the forty-year period. Such notice may be recorded by the claimant or by any other person acting on behalf of any claimant who is: (1) Under a disability, (2) unable to assert a claim on his own behalf or (3) one of a class, but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

(b) If the same record owner of any possessory interest in land has been in possession of that land continuously for a period of forty years or more, during which period no title transaction with respect to the interest appears of record in his chain of title and no notice has been recorded by him or on his behalf as provided in subsection (a) of this section, and the possession continues to the time when marketability is being determined, that period of possession shall be deemed equivalent to the recording of the notice immediately preceding the termination of the forty-year period described in subsection (a) of this section.

These statutes ensure that no viable interest is inadvertently extinguished by the Act, as interest holders are provided the opportunity to preserve their claims. Consequently, the Act should only extinguish stale claims rather than active, viable ones.

It is important to note that recording such a notice does not prevent a party from acquiring a statutory marketable record title, despite the language of **§ 47-33f(a).** A marketable record title is always created by the existence of an unbroken record chain of title for forty years or more **(§ 47-33c).** Rather, the recording of a statutory notice makes a marketable record title subject to the pre-root interest preserved by that notice. While a preserved interest may render a marketable record title commercially worthless—or even effectively extinguish it—the holder still technically possesses a marketable record title that extinguishes all other pre-root claims, interest and defects.

Sec. 47-33g. Contents of notice. Recording. Indexing. (a) To be effective and to be entitled to recordation, the notice referred to in section 47-33f shall contain an accurate and full description of all land affected by the notice, which description shall be set forth in particular terms and not by general inclusions; but, if the claim asserted under section 47-33f is founded upon a recorded instrument, the description in the notice may be the same as that contained in the recorded instrument. In addition, each notice shall clearly state the then owner or owners of record of the property involved.

(b) Each notice shall be recorded in the land records of the town where the land described therein is located. The notice shall be indexed in the grantors' index under the name or names of the owners of record as listed in the notice and in the grantees' index under the name of the claimant appearing in the notice.

The provisions of **§ 47-33g** clarify that compliance with these requirements is a condition precedent not only to the effectiveness of the statutory notice but also to the right to have the notice recorded at all. If the specific requirements of **§ 47-33g** are not met, the notice is ineffective and ineligible for recordation.

This overview highlights the key foundational aspects of the Marketable Record Title Act.

A Toast to Our Agents

Join Stewart's Massachusetts team at one of the various happy hour events we are hosting throughout Massachusetts in the coming weeks. Our first event is in Braintree on March 18, 2026 at 5PM. To RSVP for this event or find an event near you, follow this link: You're Invited - A Toast to our Agents

In Case You Missed It

Underwriting Bulletin – Insuring Sales out of Bankruptcy under 11 U.S.C. 363

On March 4, 2026, Stewart Title Guaranty Company issued a guidance bulletin to our issuing agents relative to general requirements that must be met when insuring sales out of bankruptcy under 11 U.S.C. 363. The bulletin outlines distinct requirements that must be included in all title commitments when a transaction involves a sale under 11 U.S.C. 363 of the Bankruptcy Code and covers both sales that are free and clear and sales that are not free and clear.

As a reminder, insuring a sale out of a bankruptcy estate is considered an extra hazardous risk and requires written underwriting approval from a Stewart Title Guaranty Company underwriter.

To view the bulletin in its entirety, please follow this link: SLS2026004 - UNDERWRITING - Insuring Sales Out of Bankruptcy Under 11 U.S.C. 363 | Virtual Underwriter. To view

Stewart's Virtual Underwriting Manual's section on Bankruptcy follow this link: 2.04 Bankruptcy | Virtual Underwriter

SA2026048 - SPECIAL ALERT - 75 Iron Kettle Rd, Warner, NH 03278, et al | Virtual Underwriter

On February 25, 2026, a Special Alert was issued for property in New Hampshire. Please follow the link to read the Special Alert in its entirety here: Bulletin SA2026048.

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