

Dear Stewart Partners,

We hope you had a great St. Patrick's Day! This week's mid-week update includes a brief article on Easements and the coverage provided under the Homeowner's Policy. We are also featuring an article on insuring leasehold interests.

In case you missed it, we recently issued an updated Connecticut Statute of Limitations guide, and a link is included below. We also have an upcoming Massachusetts webinar on deed reviews on April 8, and our Connecticut agency team will be at the CMBA March madness event tomorrow in Rocky Hill. Read on for more information.



Easements and the Title Policy—What is covered? By: Mark A. Jones, Esq., Associate Senior Underwriting Counsel – Massachusetts and Rhode Island

As title insurance issuing agents, you likely have taken exceptions for easements shown on the title exam and haven't given it another thought. Typically, that is fine as most easements are utility, drainage, or access easements that don't really affect the use and enjoyment of the insured's property. But how do you deal with that occasional buyer that really digs into the title and title commitment and wants to know what risks are involved with having these easements affecting the property? The good news is that you can point to the Covered Risks in the Homeowner's Policy dealing with easements. Please be advised that there is similar coverage available in the Standard Policy through endorsements, but for purposes of this article, I am only discussing coverage for easements in the Homeowner's Policy.

First, what is an easement? According to the definitions section of the Homeowner's Policy Jacket, an Easement is defined as "The right of someone else to use any part of the Land for a specified purpose." As mentioned above, typical easements are utility, drainage or access easements. Often agents will send us plot plans that show easements running through the property under driveways, sheds, garages and the home itself. This should raise some concern because the easement holder may cause damage to, or force removal of, a homeowner's structure on the homeowner's property. With that in mind, let's look at a few of the Covered Risks included in the Homeowner's Policy.

The Coverage Statement in the Homeowner's Policy jacket states the following: "*We insure You against loss or damage resulting from one or more of the Covered Risks if the matter creating the risk exists on the Date of Policy or, to the extent expressly stated in any*

Covered Risk, after the Date of Policy.” Covered Risks 23 and 24 deal with coverage for any easement reflected on Schedule B of the title policy.

Covered Risk 23 states: *“You are forced to remove any portion of Your existing structures that encroach onto an Easement or over a building set-back line, even if the Easement or building set-back line is excepted in Schedule B.”* As you can see, even if you take exception for the easement in Schedule B, the Homeowner’s Policy will insure against loss or damage as a result of the forced removal of a structure because of an encroachment onto an easement or setback line.

Covered Risk 24 states: *“Your existing structures are damaged because of the exercise of the right to maintain or use any Easement affecting Your Title, even if the Easement is excepted in Schedule B.”* Here again, even if you take exception for an Easement in Schedule B, there is coverage for loss or damage as a result of the exercise of the right to maintain or use the Easement.

This coverage can give comfort to a potential insured that may have concerns about easements that affect the property. However, if there are structures shown on any plot plans or surveys that encroach over an easement or setback line, you will want to discuss this with an underwriter before issuing the policy.



Insuring Leasehold Interests By: Katherine F. Fletcher, Esq., CT
State Counsel and Associate Senior Underwriting Counsel

Often, we receive requests to insure interests in leasehold estates. A leasehold interest is created by a lease agreement and exists for a designated period in which the owner of the fee estate (the landlord) transfers to the tenant the right to exclusive possession and use of all or part of the land. The lease agreement creating the leasehold interest is often referred to as a ground lease. A ground lease is typically a long-term lease, often between 50 to 99 years, for unimproved land or previously developed property that requires the tenant to construct or maintain improvements. Usually, the tenant holds ownership of improvements during the lease term and is obligated to pay all expenses except the landlord’s fee mortgage payments and income tax.

To be insurable, the full ground lease or a notice of ground lease must be recorded. If only a notice of lease is recorded, the notice must be sufficient on its own to create the interest which the title company insures without having to refer to the unrecorded full lease. Any notice of lease must contain the following information: the parties, identification of the subject property and the duration of the lease. In addition, the notice must demise the leasehold interest by containing the necessary operative language to create said interest. If any of these elements do not appear in the notice of the lease, it should be viewed as defective for title insurance purposes. In addition to the foregoing, the state where the underlying land is located may have additional requirements pertaining to a leasehold interest. For example, in Connecticut per Conn. Gen. Stat. Ann. § 47-19, for any lease with a term of one year or more to be enforceable against a third party, a notice of lease must contain several specific items listed in the statute.

Lenders are often asked to provide financing secured by a mortgage encumbering the leasehold interest evidenced by a ground lease. When a lender forecloses on a leasehold interest, the lender or any party taking title through the lender has the right to become the tenant under the ground lease. In such case, a leasehold loan policy may be issued to the leasehold lender. The ground lease needs to be reviewed carefully to confirm the leasehold interest is insurable and can be mortgaged. For example, among other things, the reviewer needs to confirm there are no prohibitions on mortgaging the leasehold interest and the lease contains provisions that will result in a mortgage holder stepping into the shoes of the ground lease tenant upon a foreclosure (subject to the terms and conditions of the ground lease).

With respect to Schedule B, Part 1 exceptions for an owner's or loan leasehold policy, all leasehold policies need to contain an exception for the terms and conditions of the recorded ground lease or notice thereof. Most matters affecting the fee after the recording of the lease or notice thereof do not need to be shown as exceptions. However, there are a few exceptions to this rule and the following items affecting the fee should still be shown even if arising after the notice of lease recording: building code violation proceedings, demolition proceedings, condemnation proceedings, taxes and special assessments, mechanic's liens and matters acquiring priority through subordination clauses contained in the lease or separate agreements. Moreover, if the ground lease contains easement rights, access rights, options to renew or purchase, prohibition of assignments or other limitations or rights, these should be included as exceptions on the policies. Often, we show all the matters affecting the fee and then make mention of those which are subordinate to the leasehold interest.

Leasehold owner's policies are issued with the ALTA 13-06 Endorsement and leasehold loan policies are issued with the ALTA 13.1-06 Endorsement. Each respective endorsement effectively amends the coverage in the standard title insurance policy to reflect coverage for a leasehold transaction. Additional items of loss covered by a leasehold policy include payment to landlord and costs to move the insured's personal property in case of an eviction, rent payable to persons having superior title to the landlord, fair market value of tenant's leasehold improvements and costs to obtain a replacement premises.

Prior to issuing a leasehold policy, as mentioned above, it is very important to carefully review the terms of the ground lease to determine if the leasehold interest is insurable, if mortgaging is permitted and/or if additional special exceptions should be raised. For additional information, please reach out to your local underwriting counsel or account representative. We are always happy to answer questions and provide assistance.



Updated Connecticut Statute of Limitations Guide

Our Connecticut agency team recently created a quick reference guide for statutes of limitations for liens commonly encountered in the course of searching, conveying, and insuring title to real property in Connecticut. You can view a PDF version of the guide [here](#).



Upcoming Education - 2026 Massachusetts Talk Title Webinars

Please join us for our second session on April 8th at 11:00 AM, where our underwriters will review the basic elements of deeds, helpful tips and common drafting errors.

You may register for one session or attend them all using the link below. We look forward to having you with us!

Back to Basics: Deed Review, April 8, 2026

Presented by: Rhonda Duddy, Esq.

11:00- 11:30 a.m. EST

[Register here](#)



Stewart Out and About – CMBA March Madness event

Join Stewart's Connecticut agency group on Thursday, March 19, 2026, at the Connecticut Mortgage Bankers Association March Madness Networking Social. The event starts at 4 PM at On the Border, 1519 Silas Deane Highway, Rocky Hill, Connecticut. For more information, or to register for the event, go to the [CMBA website](#). We hope to see you there!



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