

Dear Stewart Partners,

This week's mid-week update highlights two major legal developments impacting real estate practice in our region: the uncertainty created by the Vermont Supreme Court's decision in *Kirshon v. Abodeely-Mills*, which calls into question longstanding assumptions about joint tenancy and survivorship language in Vermont deeds, and Connecticut's sweeping environmental policy shift following the repeal of the Connecticut Transfer Act and transition to a Release-Based Cleanup framework under Public Act 20-09. Together, these changes underscore how statutory interpretation and legislative reform can quickly reshape title risk and environmental liability analysis across New England.

Lastly, in case you missed it, Stewart issued a bulletin yesterday alerting you to your notification obligations to Stewart in the event Stewart, as the title insurance underwriter, is triggered under the "Reporting Cascade" as the Reporting Person under FinCEN's AML regulation. We hope you find this explanation of the bulletin helpful, but don't hesitate to reach out to your local Stewart Underwriting Counsel should you have any questions.



Kirshon Decision – Background, Impact, and Proposed Legislative Fix By: Jill Spinelli Quong, Vermont State Counsel

The Vermont Supreme Court's recent decision in [Kirshon v. Abodeely- Mills](#) has created significant uncertainty in Vermont regarding real estate titles involving joint ownership.

Background and Holding

Under 27 V.S.A. § 2(a), Vermont law presumes that a conveyance to two or more persons creates a tenancy in common unless the deed clearly expresses an intent to create a joint tenancy.

In *Kirshon*, the deed at issue conveyed property to multiple grantees "as joint tenants with right of survivorship," but it also included traditional fee language referring to "their heirs and assigns forever."

The Vermont Supreme Court held that the inclusion of "heirs and assigns" created ambiguity and undermined the survivorship language. Because joint tenancy must be clearly expressed and the statute presumes tenancy in common, the Court concluded that the deed did not create a joint tenancy. Instead, it created a tenancy in common.

Why This Creates Uncertainty

The consequences of this decision are significant:

- Deeds historically believed to create joint tenancy may now be vulnerable to challenge.
- Survivorship expectations may fail, causing property interests to pass through probate rather than automatically to surviving co-owners.
- Fractional ownership interests may unintentionally pass to heirs.
- Title insurers, attorneys, buyers, and sellers face increased risk and uncertainty.
- The likelihood of quiet title actions and estate litigation increases, particularly for older family-held properties.

Many Vermont deeds contain both survivorship language and traditional “heirs and assigns” language. The *Kirshon* ruling places those conveyances into question and destabilizes long-settled expectations of ownership.

Proposed Legislative Fix

In response, the following legislative amendment to 27 V.S.A. § 2 has been proposed by members of the real estate community.

27 V.S.A. Sect. 2

(a) Conveyances and devises of lands, whether for years, for life or in fee, made to two or more persons, shall be construed to create estates in common and not in joint tenancy, unless it is expressed **therein in either the grant clause or the habendum clause of the instrument transferring title** that the grantees or devisees shall take the lands jointly or as joint tenants or in joint tenancy or to them and the survivors of them. **The requirement to specify a tenancy** shall not apply to devises or conveyances made in trust or made to spouses or to conveyances in which it manifestly appears from the tenor of the instrument that it was intended to create an estate in joint tenancy. **A conveyance to two or more persons as joint tenants, joint tenants with rights of survivorship or to them and the survivors of them that also includes the grantees heirs and assigns shall not be construed to create an estate in common.**

(c) Amendment to subsection (a) effective July 1, 2026, shall apply retroactively, except they shall not affect a suit begun or pending as of July 1, 2026.

Why This Fix Is Urgent

The proposed amendment restores clarity and predictability by confirming that clearly stated joint tenancy and survivorship language will control — even if traditional “heirs and assigns” language is also included.

Without legislative correction this year, Vermont real estate will continue to face:

- Increased title uncertainty
- Additional underwriting scrutiny
- Unnecessary litigation
- Disruption to longstanding ownership expectations

Call to Action – Agent Support Needed

This fix is critically important to Vermont real estate attorneys, property owners, buyers, sellers, and other real estate professionals.

The Vermont Bar Association is interested in hearing from you. Jim Knapp, Esq. as co-chair of the Vermont Bar's real estate section is coordinating a response on behalf of the Association on the proposed legislative fix. Please take a moment to email Jim Knapp to:

- Express your support for this legislative fix;
- Emphasize the urgency of passing it this year;
- Note the importance of restoring clarity and predictability to Vermont real estate titles

Emails can be sent to: jkvtlaw@outlook.com

Your voice as a real estate professional matters. Prompt action will help ensure this issue is resolved during the current legislative session.



The Connecticut Transfer Act Repeal and the Release-Based Cleanup Framework By: Frank Cammarano, Underwriting Counsel – Connecticut

March 1, 2026 marked the official sunset of the Transfer Act (Conn. Gen. Stat. § 22a-134 et seq.), ending a forty-year regime that required site-wide environmental investigation and potential remediation whenever certain “establishments” were transferred. The end of Connecticut's Transfer Act marks one of the most significant environmental and economic policy shifts the state has made in decades. The system that governed thousands of property transactions since the 1980's is being replaced with a release-based cleanup framework that aligns Connecticut with the rest of the country.

The Act's biggest criticisms were consistent: it triggered full site investigations even when no release had ever occurred; it slowed or killed real estate deals due to cost, uncertainty, and long regulatory timelines; and it left many contaminated sites untouched simply because they weren't being transferred. In ending the Act, the state's goal is to accelerate economic development by removing a significant barrier to property transactions and to improve environmental outcomes by shifting to a system that focuses on actual contamination rather than historical waste generation.

Beginning in spring 2026, Connecticut will implement a Release-Based Cleanup Regulation (RBCR) system under Public Act 20-09. The core principles of the new system emphasize a shift toward real-time, risk-based environmental responsibility. Cleanups are initiated by actual releases rather than property transfers, ensuring that remediation is tied to real conditions on the ground. Property owners are required to investigate and address contamination as soon as it occurs or is discovered, creating a more proactive and accountable framework. The law also prohibits creating or maintaining a release, broadening liability to include ongoing or unaddressed environmental impacts. Overall, the structure is designed to operate more quickly and predictably, aligning cleanup obligations with genuine environmental risk rather than transactional events.

Real estate attorneys will no longer need to determine whether a property is an “establishment,” prepare Transfer Act forms, or negotiate which party will take responsibility

for site-wide investigation and remediation solely because a transfer is occurring. Under the new release-based system, obligations arise when contamination is discovered, not when a property is sold, which means attorneys must shift their focus toward evaluating environmental conditions rather than statutory triggers. Attorneys will need to ensure clients understand that while transactional filings disappear, liability does not; instead, it becomes more continuous and tied to actual site conditions.

For real estate transactions, environmental due diligence becomes even more important because the discovery of a release—whether during a Phase I or Phase II assessment—now triggers reporting and cleanup obligations. The regulation ties cleanup obligations to the *presence of a release* rather than to property transfers, which alters when environmental issues surface and how they affect deal timing. This means closings are no longer the automatic trigger for remediation, but they do become the moment when parties must allocate responsibility for any known or potential releases. Purchase and sale agreements must now address release identification, responsibility for verification, and allocation of cleanup obligations.

For practitioners, the regulation shifts the attorney's role from simply confirming Transfer Act compliance to actively managing how environmental risk is allocated throughout the transaction. Attorneys must now craft more detailed representations and warranties addressing releases, historical operations, and the scope of environmental assessments. They also take on a larger role in negotiating risk-shifting tools such as environmental escrows, cost-sharing arrangements, and post-closing monitoring obligations.

Overall, the regulation reframes environmental issues as an ongoing condition of ownership rather than a transfer-triggered event. For real estate closings, this means more diligence, more negotiation, and more strategic planning, with attorneys playing a central role in ensuring that environmental risk is understood, allocated, and documented in a way that keeps transactions moving.



In Case You Missed It – [SLS2026003](#) – The “Reporting Cascade” under FinCEN’s AML Rule

Yesterday, we issued a General Bulletin to all Stewart Title Guaranty Company (STGC) issuing agents which outlined your responsibility to alert STGC when the “Reporting Cascade” as defined in the FinCEN AML regulation allocates the reporting responsibility to the title insurance underwriter.

Under the Financial Crimes Enforcement Network (“FinCEN”) Anti-Money Laundering regulation, a “Reporting Cascade” determines which real estate professional is responsible for filing the required Real Estate Report in a reportable residential real property transfer.

As explained by FinCEN in its Frequently Asked Questions, the reporting cascade is a ranked list of seven functions that may be performed in a transaction. The person performing the highest-ranking applicable function is the “Reporting Person.” If no party performs the first function, responsibility moves sequentially down the list.

Reporting Cascade (Ranked Order)

1. **Closing or Settlement Agent** – The person listed as the closing or settlement agent on the closing or settlement statement.
2. **Preparer of the Closing Statement** – If no person above is involved, the person that prepares the closing or settlement statement.
3. **Recorder of the Deed** – If no person above is involved, the person that files the deed or other ownership-transfer instrument with the recordation office.
4. **Title Insurance Underwriter** – If no person above is involved, the person that underwrites an owner's title insurance policy for the transferee (e.g., a title insurance company).
5. **Primary Disbursing Party** – If no person above is involved, the person that disburses the greatest amount of funds in connection with the transfer.
6. **Title Evaluator** – If no person above is involved, the person that provides an evaluation of the status of title.
7. **Document Preparer** – If no person above is involved, the person that prepares the deed or other legal instrument transferring ownership (including cooperative stock certificates, if applicable).

Implications for Title Insurance Underwriters

A title insurance underwriter occupies the **fourth position** in the cascade. In most transactions, one of the first three roles will be performed by a real estate professional, making it rare for an underwriter to become the Reporting Person.

However, in the unlikely circumstance that:

- No party performs functions 1, 2, or 3; **and**
- An owner's title insurance policy is issued,

the title insurance underwriter would become the Reporting Person under the regulation.

If a Stewart owner's policy is issued by a policy issuing agent, and no higher-ranking Reporting Person exists, Stewart Title Guaranty Company, as the title insurance underwriter, may be required to file the Real Estate Report.

In that circumstance, the policy issuing agent must promptly notify Stewart at: fincen@stewart.com

Required Notification Information

The notification must include:

- Property address
- Names and contact information for the transferor and transferee
- Whether the transaction involves a lender
- Anticipated closing date
- Identification of any party believed to be higher in the reporting cascade (if applicable)
- A brief description of the transaction structure and the basis for concluding that no higher Reporting Person exists

Should you have any questions, please don't hesitate to reach out to your local Stewart Underwriting Counsel.



Upcoming Education - 2026 Massachusetts Talk Title Webinars

Please join us for our first session on March 11th at 11:00 AM, where our underwriters will focus on Pre-MUPC probate reviews in the chain of title. This session will kick off what promises to be an informative and engaging series throughout the year.

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

Probate 101: Review of Probate in the Chain of Title (pre-MUPC), March 11, 2026

Presented by: Jutta R. Deeney, Esq. and Tracie Kester, Esq.

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

[Register here](#)



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