New England Regional Midweek Update
4/1/2026

Dear Stewart Partners,

Welcome to April. As New Englanders, we know this month brings muddy boots, tax deadlines and a surge in spring market activity. Keep in mind that your Stewart team is always here for you and happy to help you as you navigate through an always changing real estate market.

In this week's update we are highlighting a recent Massachusetts case regarding the enforceability of restrictive covenants. Additionally, for those practicing in Rhode Island, we are providing a summary on Rhode Island's non-resident withholding tax relating to real estate transfers.

As a reminder for our Massachusetts agents, our April installment of Stewart Underwriters Talk Title is scheduled for 11:00 a.m. on April 8. Rhonda Duddy will present a concise 30-minute webinar on Deed Review. A link to register is provided below.

Also, for those of you in Massachusetts, the Massachusetts Agency and Underwriting team will be out and about hosting happy hour events in Worcester and Springfield later this month. To register please use the link provided below.

Lastly, Stewart is proud to be a bronze sponsor at the United Way of Central Connecticut's Building Foundations Breakfast on April 30, 2026. For more information, check out the details below.

A Developer's Nightmare – Deed Restriction Valid Despite Resembling Prior Expired Restriction

By: Rhonda Duddy, Esq., Massachusetts and New Hampshire Underwriting Counsel

In a recent Massachusetts case, Gikow v. Cleary Associates, LLC and Andover Community Trust, Inc., Essex Superior Court Civil Action No. 2377CV00857, the court enforced a 2009 deed restriction prohibiting residential construction on a parcel of land in Andover, despite the expiration of an earlier, similar deed restriction recorded in 1955.

The property at issue was originally owned by Jacqueline Lawlor, who conveyed it to Cleary Associates ("Cleary") in 2009. The deed contained a restriction limiting the property to a single-family home with specific site requirements. This restriction was similar but not exactly the same as a previously recorded restriction affecting the parcel initially imposed in 1955. After the 2009 conveyance, Cleary subdivided the land into two lots and sold one of

those lots to the plaintiffs. Cleary entered into an agreement to sell the remaining lot to Andover Community Trust, Inc. ("ACT"). ACT intended to construct a residence on the lot. Thereafter, the plaintiffs filed suit to enforce the 2009 restriction to prevent development on the land to be acquired by ACT.

The 1955 deed contained the following restriction: "Said premises are conveyed subject to restrictions that they shall be used for no other purpose than the erection and occupancy of a single family home having a pitched roof and appurtenant private garage which may be a separate unit or attached to said dwelling; further that such dwelling and/or garage shall be set back at least thirty feet from the street line and shall not be closer than fifteen feet on either side line."

The 2009 deed contained the following restriction: "Said premises are conveyed subject to restriction that they shall be used for no other purpose than the erection and occupancy of a single family home having a pitched roof and appurtenant private garage which may be a separate unit or attached to said dwelling. Further and no closer than 15 feet on either side line."

The difference between the 1955 restriction and the 2009 restriction is that the 2009 restriction omits the requirement that the dwelling be set back thirty feet from the street line.

The defendant Cleary argued that the 1955 restriction expired in 1985 and that the 2009 restriction was intended to mirror exactly the 1955 restriction and the fact that it did not was the result of a scrivener's error. Cleary also argued that Mrs. Lawlor could not have revived the expired restriction or could have created a new restriction by simply repeating the restrictive language contained in the 1955 deed in the 2009 deed.

The parties agreed that the 1955 restriction expired in 1985 pursuant to MGL c.184, § 23, which provides that restrictions shall be limited to thirty years after the date of the deed creating them.

The plaintiffs offered evidence that Mrs. Lawlor specifically intended to include the 2009 restriction in the deed as a new restriction and that she would not have proceeded with the sale of the lot if the 2009 restriction had not been included in the deed.

The judge found that ACT had no reasonable expectation of proving, by clear and convincing evidence, that there was no intent on behalf of the seller to create a new restriction. The judge also found that the Plaintiffs did offer undisputed evidence that the prior owner intended to include the restriction and would not have proceeded to consummate the sale without the restriction language included. Based on these findings, the court concluded that the 2009 restriction constitutes an enforceable deed restriction and that no dwelling may be constructed on the lot. The court emphasized that the 2009 deed clearly expressed an intent to create a new restriction, rather than merely restating or extending the expired 1955 restriction. As such, the restriction was not treated as a revival of the earlier restriction, but as a valid, newly imposed encumbrance running with the land that confirmed no dwelling can be constructed on the parcel.

This was a decision issued based on a cross-motions for summary judgment, and the defendants have appealed. We will continue to watch this case and keep you updated.

This case is a good reminder that when reviewing restrictions recited in a deed, it is essential to recognize that even if an earlier restriction appears to have expired by statute, a later deed containing a restriction that resembles the old one could nevertheless create a distinct and enforceable new restriction and the factual circumstances surrounding the transaction can play a critical role in how the deed and the restriction is interpreted.

As always, please feel free to reach out to your underwriter if you come upon a deed restriction in your title and have questions related to what appropriate exception may need to be taken on a title insurance policy that you are being asked to issue.

Determining which individuals or entities are subject to the non-resident withholding tax under Rhode Island General Laws §44-30-71.3 By: Eileen C. O'Shaughnessy, Esq., Rhode Island Underwriting Counsel

In 1992, Rhode Island's statute establishing withholding tax on the sale of real property by nonresidents became effective. Determining a seller's residency status may not be the flashiest part of a real estate transaction, but in Rhode Island, it's absolutely essential. This is due to the fact that the failure to pay this tax or an ambiguity of whether the sale triggered the tax can create a lien or cloud on title. Under R.I.G.L. §44-30-71.3, residency classification directly affects withholding requirements at closing—something every conveyancing attorney and title insurance agent must navigate with precision. It is the responsibility of the buyer to withhold, and they must pay the amount withheld to the Division of Taxation (DOT) within three banking days after the date of the closing in order to obtain a discharge of the lien.

A recitation regarding the residency status of the seller must appear on the Deed of conveyance. The lien for nonresident sellers exists for ten years from the date of the recording of the Deed, and unless there is a statement that no withholding is due, a discharge of the lien must be obtained from the DOT and recorded in the land evidence records.

In addition to the statute, there are rules and regulations addressing how to determine the residency of individuals, corporations, LLCs, estates and trusts, among others.

"Resident" and "nonresident" are defined with respect to individuals, estates and trusts in R.I.G.L. §44-30-5. https://law.justia.com/codes/rhode-island/2021/title-44/chapter-44-30/section-44-30-5/ A resident individual is either domiciled in Rhode Island or maintains a permanent place of abode in the state for more than 183 days of the taxable year. If, up to and including the closing date of sale, an individual is a resident of this state but intends to move to another state immediately after the closing, that individual is deemed a resident individual for purposes of R.I.G.L. §44-30-71.3. A resident estate is one in which the decedent was a Rhode Island resident at the time of their death. The seller must execute a Rhode Island residency affidavit ("Affidavit"), available on the DOT website, and provide it to the buyer/buyer's attorney who must retain it in their file. Seller's Residency Affidavit

When dealing with a natural person who is a seller, if the seller is not deemed a nonresident under the statute, one of the following statements must appear in the deed to establish that

a nonresident withholding is not required:

1. Transfer is such that no R.I.G.L. § 44-30-71.3 withholding is required as grantor is a resident of the State of Rhode Island as evidenced by affidavit; or
2. Transfer is such that no R.I.G.L . § 44-30-71.3 withholding is required as decedent was a resident of the State of Rhode Island at the time of her death as evidenced the Affidavit

In the case of trusts, R.I.G.L. §44-30-5 spells out the definitions of resident trusts. The key element for trusts is the residency of the beneficiaries. If the trust is not deemed a nonresident under the statute and no withholding required, the following language must be contained in the deed:

1. Transfer is such that no R.I.G.L . §44-30-71.3 withholding is required as trust is a resident trust of the State of Rhode Island as defined in R.I.G.L. § 44-30-5(c) and all beneficiaries are Rhode Island residents as evidenced by their Affidavits.

A corporation is considered a Rhode Island resident if it is registered to do business with the Rhode Island Secretary of State. If the corporation is not deemed a nonresident under the statute and no withholding required, the deed must contain the following language:

1. Transfer is such that no R.I.G.L. § 44-30-71.3 withholding is required as grantor is a resident corporation as evidenced by the Affidavit

Residency of limited liability companies (“LLC”) depends on how the entity elects to be taxed under federal tax law:

- Single-member LLC (disregarded entity): Residency follows the member
- Multiple member LLC: residency follows the members
- Partnership-taxed LLC: Residency follows the partnership rules
- Corporation-taxed LLC: Residency follows corporate residency rules

For an LLC with some resident and some nonresident members, the withholding must be done for the nonresident members in proportion to their share of the LLC. To establish of record that no withholding is required for some or all of the members, the deed should contain one of the following applicable statements:

1. Transfer is such that no R.I.G.L. § 44-30-71.3 withholding is required as all members of grantor are residents of Rhode Island as evidenced by Affidavit.
2. Transfer is such that no R.I.G.L. § 44-30-71.3 withholding is required as grantor member John Smith is a resident of Rhode Island as evidenced by Affidavit and R.I.G.L. § 44-30-71.3 withholding is required as grantor member Bob Jones is not a resident of Rhode Island.

Please be aware that the above lists are not exhaustive. There are exceptions for a number of types of entities and situations, but the above are the most commonly arising seller scenarios. It is important that the settlement agent and title agents understand residency determinations, especially since many nonresidents or their attorneys are unfamiliar with the law in this area.

To review the regulations as published by the RI Secretary of State follow this link: https://rules.sos.ri.gov/regulations/part/280-20-10-1

For the text of RIGL 44-30-71.3 follow this link: RIGL 44-30-71.3 follow

A Toast to Our Agents

Join Stewart's Massachusetts team at one of the happy hour events we are hosting in April. One will be held in Worcester on April 15, 2026 at 5:30 p.m. and another will be held in Springfield on April 16, 2026 at 5:30 p.m. To register for either of these events, follow this link: A Toast to Our Agents - 2026 Appreciation Event We hope to see you there!

Upcoming Education - 2026 Massachusetts Talk Title Webinars – Back to Basics: Deed Review – April 8, 2026

Please join Rhonda Duddy, underwriting counsel for Massachusetts and New Hampshire, on Wednesday, April 8 at 11:00 AM, for the next installment of our Talk Title series. You may register for one session or attend them all using the link below. We look forward to having you with us! Massachusetts Resources and Newsletters | Stewart.com

Caring for Our Community – United Way of Central Connecticut's Building Foundations Breakfast

Connecticut Underwriting Counsel **David Veleber** and Agency Sales Representative **Monica Barrera** will be at the United Way of Central Connecticut's Building Foundations Breakfast at the Connecticut Convention Center on April 30, 2026. This is the 6th annual Breakfast, and funds raised go to preventing homelessness and securing stable housing. Billed as "the signature event of the year for the commercial real estate and building industry," the event runs from 7:30 to 10:00 A.M. Stewart is proud to be a bronze sponsor of this event. For more information, visit the United Way's website: United Way

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