

Dear Stewart Partners,

We have entered the month of June, with summer just weeks away. In this Mid-Week Update, we are presenting a Connecticut case involving the failure of a landowner to sufficiently establish prescriptive easement rights. We also review the Connecticut statute governing the discharge of an invalid lien on real property.

Additionally, we highlight upcoming educational opportunities, including the continuing Massachusetts “Probate 101” webinar series, which is happening **later today at 11:00 a.m.** If you have missed any of Stewart’s webinars hosted by our New England Underwriting team, recordings are available through Stewart Academy. For assistance accessing Stewart Academy, please contact your Stewart Account Representative.



Connecticut Appellate Court Clarifies Prescriptive Easement Standards in Finkelstein v. 45 Lake Drive, LLC, 235 Conn. App. 740 (Conn. App. Ct. 2025) By: Frank Cammarano, Underwriting Counsel – Connecticut

In Finkelstein v. 45 Lake Drive, LLC, the Connecticut Appellate Court affirmed a trial court judgment rejecting claims for a prescriptive easement and related relief, emphasizing the rigorous evidentiary burden required to establish open, visible, and continuous use under Connecticut General Statutes § 47-37.

Background and Facts

The plaintiff had owned his property at 43 Lake Drive since 1998. He asserted that, beginning in 1999, he routinely crossed the adjacent property at 45 Lake Drive, then under different ownership, to access his backyard for occasional deliveries and maintenance work. This practice allegedly continued through 2022.

The defendant purchased 45 Lake Drive in 2021. According to the record, the prior owner had no knowledge of the plaintiff’s use of the property. In 2022, the defendant erected a fence that blocked the plaintiff’s access, prompting the plaintiff to bring an action claiming a prescriptive easement. At trial, the plaintiff introduced testimony, photographs, a hand-drawn sketch, and video evidence intended to demonstrate his historic use of the property. He also claimed that he used the path regularly, approximately twice per year, over a span exceeding fifteen years.

Governing Legal Standard

The court applied Connecticut General Statutes § 47-37, which sets forth the elements required to establish a prescriptive easement. To prevail, a claimant must demonstrate that the use of another's property was (1) open and visible, (2) continuous and uninterrupted for a period of fifteen years, and (3) made under a claim of right. Additionally, Connecticut courts require that the location and bounds of the claimed easement be established with reasonable certainty.

Court's Analysis

The trial court found that the plaintiff failed to satisfy these requirements, and the appellate court agreed.

Lack of Open and Visible Use

The court emphasized that the plaintiff's use was not sufficiently open and visible to put the property owner on notice. Critically, the plaintiff did not maintain or improve the area he traversed, nor did he create any observable physical conditions marking a defined path. The absence of such visible indicators weighed heavily against a finding of adverse use.

Sporadic and Intermittent Use

The court also concluded that the plaintiff's use was too intermittent to qualify as "continuous and uninterrupted." Although the plaintiff testified to biannual use, the trial court found this claim not credible. Instead, the evidence showed only isolated instances of crossing, falling short of the consistent and regular use required to establish prescriptive rights.

Failure to Establish Definite Bounds

Equally significant was the plaintiff's inability to define the precise route of the alleged easement. The evidence demonstrated that the plaintiff did not follow a single, consistent path, but rather took varying routes across the defendant's property over time. The court held that such inconsistency is insufficient to establish the location of an easement with reasonable certainty; a necessary element under Connecticut law.

Practical Implications

This decision serves as a useful reminder for practitioners and property owners that occasional or informal use of neighboring property, particularly where it leaves no visible trace and follows no defined route, will rarely support a prescriptive easement claim. Claimants must present clear, consistent, and well-documented evidence not only of long-term use, but also of a specific, identifiable path that would put a reasonable property owner on notice.

From an underwriting and risk perspective, the case underscores the importance of observable conditions and recorded rights, as courts remain reluctant to recognize easements based on ambiguous or sporadic historical practices. Physical evidence is often determinative, which is why inspection of the land paired with targeted questions regarding the use and location is critical.



**Connecticut Discharge of Invalid Liens on Real Property:
Statutory Framework and Practice Guidance** By: David M.
Piechota, Connecticut Underwriting Counsel

Statutory Framework for Discharge of Invalid Liens

The discharge of an invalid lien on real property in Connecticut is governed primarily by **Connecticut General Statutes § 49-51**, which provides a structured process available to any interested party. This statute applies to all liens, not just mechanic's liens.

Step-by-Step Procedure Under Conn. Gen. Stat. § 49-51

Step 1: Formal Written Notice to Lienor

The process begins with formal notice:

- The interested party must provide written notice to the lienor stating that the lien is invalid and demanding its discharge.
- This notice must be sent via:

Registered mail, or

Certified mail, return receipt requested

- The notice must be directed to the lienor's **last known address**.

Step 2: Statutory Waiting Period

- Upon receipt of the notice, the lienor has **30 days** to respond.
- Within this period, the lienor must:
 1. Issue a discharge or release of the lien, and
 2. Send it via **first-class mail**.

Step 3: Application to the Superior Court

If the lienor fails to discharge the lien within the 30-day period:

- The interested party may file an **application with the Connecticut Superior Court**.
- The application requests a judicial determination that the lien is invalid.

The court will:

1. Schedule a **hearing**, and
2. Require proof of the lien's invalidity.

Step 4: Recording the Judgment

If the court rules in favor of the applicant:

- The court will issue an order declaring the lien invalid.
- To complete the discharge:

1. A **certified copy of the judgment** must be recorded in the **Town Clerk's Office** where the property is located.

- Recording the judgment fully clears the title.

You can read the full statutory text here: [Connecticut/title-49/chapter-847/section-49-51/](https://www.casalegry.com/Connecticut/title-49/chapter-847/section-49-51/)

Alternative Methods for Addressing Mechanic's Liens:

Bonding the Lien

- If immediate removal is necessary (e.g., pending sale or refinance):
 - The lien may be substituted with a surety bond.
- This allows the transaction to proceed while preserving the lienor's claim against the bond.

Lapse by Statute of Limitations

- A mechanic's lien becomes invalid **by operation of law** if:
 1. More than one year passes, and
 2. No foreclosure action or **lis pendens** is filed.
- Such liens are extinguished automatically.

As always, if you have any questions regarding mechanic's liens or other liens which have not been released of record, please reach out to one of Stewart's underwriters.



Upcoming Education

Stewart's Massachusetts Underwriters Talk Title – June 3, 2026

Join Jutta Deeney, Esq., Stewart's New England Regional Underwriting Counsel, and Tracie Kester, Esq., Deputy New England Regional Underwriting Counsel, for the next installment of their "Probate 101" series. In this installment, they'll be discussing reviewing probate in the back chain of title when the death occurred after the enactment of the Massachusetts Uniform Probate Code. The 30-minute webinar will be held on June 3, 2026 at 11 AM. To register, click this link: [Register Here](#)

Zachary Greenfield to Present with Maine Bar Counsel

On July 15, 2026, from noon to 1:00 PM, **Zachary Greenfield**, Stewart's Maine State Counsel, will present a webinar with Aria Eee, Esq., Executive Director and General Counsel for the Maine Board of Bar Overseers. The webinar will cover ethical issues for attorneys in real estate transactions. Participants will qualify for one (1) Maine CLE credit. Registration instructions will be provided when available.



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