



Dear Stewart Partners,

As we move into the busy fall real estate season, this week's Mid-week highlights several common scenarios that deserve extra underwriting attention, from tenant-occupied properties and waterfront parcels to construction loans, foreclosures, and bankruptcy matters. We also feature an article focused on Maine real estate and the importance of legal access. Maine's camp roads, logging roads, and rural properties often present unique access challenges, making it essential to confirm that apparent access is supported by documented legal rights before closing.

Finally, we encourage you to take advantage of our upcoming educational opportunities, including our September 23 webinar on communicating the value of title insurance to clients. As always, your Stewart underwriting team is here to help navigate questions before they become problems.



Things That Make You Go Hmmm....On Title By: Laura B. Schumacher, Esq., Massachusetts Underwriting Counsel

We've all been there. You've just received a signed Offer to Purchase, you're negotiating a Purchase and Sale Agreement; reviewing a Title Exam or checking a Plot Plan, and you see something that makes you think "What do I do about that?!?"

Below is a list of common scenarios that require some extra underwriting attention:

Tenant Occupied Properties: Typically on commercial properties and residential investment properties. On commercial sites, title will often include one or more recorded Notices of Lease. Request copies of leases when possible and obtain a tenant rent roll through the seller's affidavit. Take exception to lease interests referred to any recorded Notice of Lease and consider a general exception for the rights of tenants in possession and any unrecorded leasehold interests.

Party Walls: Common in urban areas, where homes are separated by a dividing wall between two connected and mutually supporting buildings. Sometimes title will include a Party Wall Agreement, which should be listed as an exception. If no agreement appears of record, consider adding a general party wall exception like the one found in the exceptions manual on Virtual Underwriter ([\(PTY\) Party Walls](#)) .

Waterfront Property: This applies to more than just your ocean and lakefront property. Rivers, streams, ponds, wetlands, and even intermittent waterways can raise title concerns.

Boundary issues, state ownership claims, riparian rights, flowage rights, and regulatory restrictions may require additional review and policy exceptions. Virtual underwriter has numerous exceptions that may be applicable and can be used, categorized under ([WET](#)) [Wetlands](#).

Commercial Construction Loans: Construction lending involves risks beyond those present in a typical permanent loan transaction. Mechanic's lien exposure, retainage requirements, disbursement controls, completion issues, and priority concerns all warrant additional underwriting attention.

Railroads: Extra care is warranted whenever a survey or plot plan shows railroad tracks crossing or abutting the property, or the chain of title reflects easements, rights-of-way, or other interests granted to a railroad. Appropriate exceptions should be considered even if the rail line is no longer active. Also, state and federal statutes may require certain state or federal approval and waivers of first refusal rights when dealing with land owned or used as railways.

Bankruptcy: A current or recent bankruptcy filing involving an owner, borrower, purchaser, or seller can significantly impact title. Transfers that occur during a bankruptcy proceeding may be void or subject to challenge absent appropriate court authorization. Always consult underwriting before proceeding.

Receivership: When a receiver is involved, it is important to confirm the scope of the receiver's authority and review all relevant court orders. The authority to sell, lease, refinance, or otherwise convey property must be clearly established. This is another special risk area where Stewart's underwriting counsel should be involved.

Foreclosure or Deed in Lieu: When title reflects a foreclosure or deed-in-lieu transaction, additional review is often required. Questions regarding notice, authority, procedural compliance, bankruptcy issues, and potential challenges by former owners or junior lienholders should be evaluated by an underwriter.

Tax Deeds or Forfeitures: Properties acquired through tax foreclosure, tax deed, or other governmental forfeiture proceedings often require careful examination of statutory compliance, notice requirements, redemption rights, and applicable curative periods. These matters should generally be reviewed by underwriting.

Native American Tribal Lands: Properties located on or near tribal lands can present unique jurisdictional and title issues. Tribal authority, sovereign immunity, land status, and restrictions on conveyance may affect insurability. Please contact a Stewart underwriter if you think your site is on or near tribal lands.

Solar and Energy Projects: Utility-scale solar facilities, battery storage projects, wind energy facilities, and properties subject to power purchase agreements often involve complex easements, lease arrangements, financing structures, and access rights. These transactions require underwriting review prior to inclusion of energy-specific endorsements.

Pending Litigation: Any lawsuit affecting the property, ownership, use, access, or financing of the property should raise an underwriting flag and require approval from a Stewart underwriting counsel prior to insuring. To help in evaluating insurability, obtain copies of

pleadings and evaluate whether specific exceptions or additional requirements are necessary before closing.

Cannabis: Properties used for cannabis cultivation, manufacturing, or retail operations may present unique underwriting considerations, lender requirements, and company-specific underwriting restrictions. Consult with an underwriter before proceeding.

While by no means an exhaustive list, the above are common examples of issues that require careful review and are worth a conversation with your underwriter before closing.



No Diggity: Don't Doubt the Access By: Jamie Spaulding, Esq.,
Maine Underwriting Counsel

Everyone loves a waterfront camp or back lot until the title search raises a simple question: How do you legally get there? The dirt road is obvious. The tire tracks are obvious. The legal right to use the road? Not always. From seasonal camp roads to old logging trails, Maine properties frequently depend on access rights that may be poorly documented, ambiguously described, or based solely on longstanding use. For title attorneys and examiners, access is one area where assumptions can quickly become claims.

Actual Access vs. Legal Access

One of the most common issues encountered in Maine title examinations is the distinction between physical access and legal access. Just because a road exists and has been used for years does not necessarily mean the owner has an enforceable right to use it. Many rural parcels have been accessed through the same route for generations. Neighbors may recognize the road, utility companies may service the property, and prior owners may never have encountered a problem. However, when a lender, purchaser, or title insurer asks where the legal right to use the road is documented, the answer is not always clear.

The existence of a roadway is not what matters. The existence of a legally enforceable right to use that roadway is what ultimately determines insurability.

Look Beyond the Road Itself

When access is not obvious from the current deed, it is important to review the broader chain of title, referenced plans, and any recorded easements affecting the property. Key questions include:

- Is there a recorded easement?
- Does the easement clearly benefit the insured parcel?
- Is the easement location adequately described?
- Does the easement provide vehicular access or merely pedestrian access?
- Have the access rights been properly conveyed through each transfer of ownership?

Finding an easement is only the start of the analysis. Many access rights are limited in scope, poorly described, or fail to clearly connect to the parcel being insured.

Camp Roads and Logging Roads Deserve Extra Attention

Maine's landscape creates unique title challenges. Properties located on private camp roads, discontinued town ways, or historic logging roads often come with decades of established use but limited documentation. In some cases, an apparent roadway crosses multiple ownerships. In others, a subdivision plan may show a roadway that was never formally accepted or completed. Occasionally, the route currently being used is not even the route described in the recorded easement. These situations do not necessarily make title uninsurable, but they often require additional investigation and careful underwriting analysis.

Prescriptive Rights Are Not a Substitute for Record Evidence

When record access is absent, parties sometimes point to longstanding use and conclude that a prescriptive easement must exist. The reality is that a prescriptive easement is a fact-intensive legal determination that only a court can make. While evidence of open, notorious, and continuous use may ultimately support such a claim, title insurers generally need sufficient evidence and underwriting support before treating access as insurable.

Simply put, tire tracks do not create marketable title.

Think About the Next Transaction

One useful test is to ask whether a future examiner reviewing the file ten years from now would reach the same conclusion. If your analysis depends on assumptions, local knowledge, or verbal assurances from the parties, it may be worth taking a closer look. The best title files tell a complete story through recorded documents and supporting evidence rather than relying on explanations that may be forgotten after closing.

The Takeaway

Access issues rarely attract attention when a transaction is running smoothly, but they can quickly become one of the most significant risks affecting the marketability and insurability of real estate. A little extra diligence before closing can prevent difficult conversations later. So, the next time a file includes a well-worn camp road, an old logging trail, or a driveway that "everyone has always used," resist the temptation to assume the answer is obvious. As title professionals, we're not insuring tire tracks, habit, or local custom. We're insuring legal rights. Before you say there's "no doubt" about access, make sure the record says the same thing.

When record access is unclear, involve your underwriter early. A short conversation before closing is often far easier than addressing an access dispute after a policy has been issued. After all, when it comes to Maine title work, a little healthy skepticism can go a long way. No diggity. No doubt. Just good underwriting.



Educational Opportunities

Upcoming Webinar:

Selling the Value of Title Insurance on **September 23, 2026 at 11 AM.**

Join Jamie Spaulding, Esq. and Brian Goudas, Esq. for a discussion on selling the value of title insurance to prospective purchasers, including the advantages of the Homeowner's (Expanded) Policy.

This offering has been approved for credit in RI, NH, CT, ME and NH. To register, follow this link: [Registration Link - The Value of Title Insurance](#)



[Meet Our Team | Stewart Connecticut](#)

[Meet Our Team | Stewart Maine](#)

[Meet Our Team | Stewart Massachusetts](#)

[Meet Our Team | Stewart New Hampshire](#)

[Meet Our Team | Stewart Rhode Island](#)

[Meet Our Team | Stewart Vermont](#)



1-800-STEWART

www.stewart.com

® 2026 Stewart. All rights reserved.

This email was sent to your address because your email preferences are set to receive our updates.

[unsubscribe](#)