

Dear Stewart Partners,

How is it possible we are already at the point in the summer where our college-aged students are moving back to school! Time flies, especially during this season. In this week's update we discuss the impact of municipal release deeds on joint tenancies in Maine. We are also highlighting a new law passed in NH aimed at outlawing right-to-list agreements in the Granite State.

As a reminder, NELTA's upcoming annual convention will be in New Haven, Connecticut. Registration information can be found below. Our New England District Manager, Gary Bernier as well as our Regional Underwriting Counsel, Jutta Deeney will be attending, and we hope to see you there.



The Effect of Municipal Release Deeds on Joint Tenancies in Maine By: Zachary Greenfield, Esq., Maine State Counsel

Under Maine law, a joint tenancy is created when the vesting deed clearly expresses that intent. According to 33 M.R.S.A § 159, "[d]eeds in which 2 or more grantees anywhere in the conveyances are named as joint tenants or named as having the right of survivorship or that otherwise indicate anywhere in the conveyances by appropriate language the intent to create a joint tenancy between such grantees must be construed as vesting an estate in fee simple in such grantees with right of survivorship."

Severance of a joint tenancy in Maine, which results in a tenancy in common, is equally simple. According to 33 M.R.S.A § 159, "[a] conveyance of real property by an owner . . . holding in joint tenancy to the owner or to the owner and another or others, or to the owners or to the owners and another or others, as tenants in common, or that otherwise indicates anywhere in the conveyance by appropriate language the intent to create a tenancy in common or the intent to sever the joint tenancy . . . , or without expression of the tenancy created . . . , creates an estate in common" Unlike some other states, Maine does not require the conveyance to a straw person to sever a joint tenancy.

Although Maine's statutory scheme provides a clear mechanism for intentionally creating and severing joint tenancies, title examiners in Maine are frequently presented with one common scenario in which joint tenancies are unintentionally severed.

As we described in our Mid-Week on March 19, 2025, [Mid Week 3.19](#) Maine's municipal real estate tax lien foreclosure process is automatic and requires no deed or court action for title to vest in the municipality. Once that occurs, if the municipality agrees – as they typically do

– to allow the delinquent taxpayers to pay the outstanding taxes to restore their rights in the property, the municipality must give the delinquent taxpayers a release deed instead of a lien release. This is based on the theory that the municipality's lien rights merged into the fee interest upon the foreclosure. All too often, however, when deeding the property to multiple owners, municipalities fail to include joint tenancy language in the release deed. In fact, they rarely include any tenancy language. The result, for all municipal release deeds executed before January 1, 2012, is that the taxpayers took title as tenants in common even if they formerly held title as joint tenants. This is almost always unintended and can create significant title problems if one joint tenant dies and the other, typically their spouse, doesn't commence probate proceedings for the deceased spouse because the survivor believed they became vested in full title to the property as surviving joint tenant upon their spouse's death. Years later, when the survivor attempts to sell the property, they learn that they only hold a half interest, and that the other interest is in the heirs or devisees of their deceased spouse. Resolving this dilemma sometimes requires probate proceedings. Other times, it is too late for probate, and the issue must be addressed with affidavits of heirship and deeds from heirs or devisees.

To address this problem, which any Maine title attorney, abstractor, or examiner, will tell you, is a frequent occurrence, Maine's legislature added the following to 30 M.R.S. §159 in 2011:

A conveyance on or after January 1, 2012 by a taxing or assessing authority of real property acquired from joint tenants by foreclosure of a tax or assessment lien mortgage, if made to such persons, recreates the joint tenancy held by the persons at the time of the foreclosure unless otherwise indicated anywhere in the conveyance by appropriate language.

This new language directly addresses the problem. All municipal release deeds given after January 1, 2012 restore a former joint tenancy unless stated otherwise. The bill that enacted the new statutory language, however, contained no retroactivity language. As such, although the legislature fixed the problem prospectively, the problem continues to exist for municipal release deeds executed prior to January 1, 2012. As such, whenever reviewing Maine titles that include municipal release deeds resulting from tax lien foreclosures, always be aware of this continuing problem.

If your search reveals a release deed from a municipality, prior to January 1, 2012, and the subsequent conveyance is by less than all of the grantees in that deed, it is imperative to double check how title vested and confirm that the grantees took title with a right of survivorship. Of course, our Maine underwriting team is already available to answer any questions and help find solutions if you do discover a concern.



New Hampshire Bans Unfair Service Agreements in Real Estate Transactions By: Michelle Radie-Coffin, Esq., New Hampshire State Counsel

On July 15, Governor Kelly Ayotte signed into law new consumer protection legislation aimed at prohibiting "unfair service agreements" in residential real estate transactions. This legislation directly targets predatory practices such as Non-Title Recorded Agreements for

Personal Services (NTRAPS), which have drawn scrutiny nationwide. Oftentimes these agreements offer small, upfront cash payments in exchange for decades-long contracts for exclusive rights to sell the property, even after the homeowner has passed away. If the homeowners or their heirs sell the property using a different listing agent, they could be forced to pay a penalty far greater than the original cash payout, often up to 3 percent of the purchase price.

Key Provisions of the NH Law:

The statute defines a “Prohibited Listing Agreement” as one that purports to:

- Bind any future owner not a party to the agreement;
- Allow for the assignment by the provider of a real estate brokerage service to a third party without notice to or consent of the owner;
- Create a lien, encumbrance, or other real property security interest; or
- Obligate the owner to pay a fee or commission to the provider upon a sale or transfer of the residential real estate when the sale or transfer is not the result of a real estate brokerage service provided by the provider.

The effect of the statute is as follows:

- Make NTRAPS unenforceable by law.
- Restrict and prohibit the recording of NTRAPS in property records.
- Create penalties if NTRAPS are recorded in property records.
- Provide for the removal of NTRAPS from property records and recovery of damages.

The provisions of this law are designed to protect property owners from encumbrances that impair marketability of title and restrict the owner’s ability to sell or refinance. The American Land Title Association (ALTA), the New England Land Title Association (NELTA), and AARP strongly supported passage of the bill. The organizations have emphasized the importance of protecting homeowners, particularly older adults, from deceptive practices that limit property rights. In a recent press release, ALTA praised New Hampshire for joining thirty-two other states that have enacted similar protections, noting that such laws safeguard the integrity of property records and remove unreasonable restraints on transfer. ([ALTA - Press Releases](#)) This law represents a significant win for both consumers and the title industry by eliminating agreements that interfere with the free transferability of real property.

To read the full text of the new law visit https://gc.nh.gov/bill_status/pdf.aspx?id=16972&q=billVersion. The law will go into effect on January 1, 2026. If you have any questions about this law, or how to address the impact of such a contract if one is recorded against property that is subject to a transaction you are seeking to insure, please contact your NH underwriting team.



2025 NELTA Annual Convention – September 7-9, 2025, New Haven Connecticut

The New England Land Title Association (NELTA) Annual Convention is being held in New Haven, Connecticut from September 7 through September 9, 2025. Continuing education

credits have been applied for in Connecticut, Maine, New Hampshire, Vermont, and Rhode Island.

You can find information on registering for the conference and hotel, along with the schedule of events, at NELTA's website here: <https://nelta.org/event/25ACAttReg>



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