

Dear Stewart Partners,

It is really starting to look and feel like fall in New England with the vibrant colors of the leaves and the slight chill in the air. The forecast is predicting that temperatures will climb back into the 60's this weekend so it's the perfect time to get outside and enjoy all the fall happenings. We've listed a couple of ideas at the bottom of this update to get you outside this weekend.

In this week's update we are highlighting a recent decision which involved a policy coverage dispute and analyzed policy provisions as they relate to government regulations and use of property. Although the decision is from New York, the case provides a good analysis as to what is deemed a defect in title.

Lastly, as a reminder, there are two Stewart National Agency division webinars happening today and tomorrow. If you haven't signed up, there's still time. Information and registration links are below.



Case Summary: Fawn Second Ave. LLC v. First Am. Title Ins. Co., S.D.N.Y., 2022 U.S. Dist. LEXIS 122021, 2022 WL 2666911

A decision from the United States District Court for the Southern District of New York provides a good discussion on what is considered a title defect as opposed to a government restriction on use. The case is *Fawn Second Ave. LLC v. First Am. Title Ins. Co.*, S.D.N.Y., 2022 U.S. Dist. LEXIS 122021, 2022 WL 2666911, and while it does not deal with Massachusetts law or property, it is an important reminder that governmental regulations and restrictions are not covered under a standard policy of title insurance.

The facts are as follows. The Defendant title insurance company conducted its usual title search and issued a standard title insurance policy to Plaintiffs after they purchased property in New York City in November 2015. After buying the property the Plaintiffs started to make improvements, but received letters demanding that all work stop because the property was located within a landmarked historical district. The New York City Landmarks Preservation Commission had designated the property as a landmark in 2012. However, the designation was not included as an exception in the title report or the title policy because it was not recorded in the public records (it was eventually recorded 5 years after the policy was issued, in August 2020).

After receiving the letters, the Plaintiffs filed a claim with the Defendant based upon diminution in value as result of the unexpected landmark designation. The Defendant rejected the claim, and Plaintiffs filed suit shortly thereafter, alleging the Defendant breached its coverage obligations under the Policy. Although the lower court denied the Defendant's motion to dismiss, the District Court granted the motion and dismissed the Plaintiffs' claims.

In arguing that the title insurer breached its obligations, Plaintiffs relied on two covered risks in the title policy. First, Plaintiffs alleged that the landmark designation constituted a defect in title under Covered Risk 2(a), which provides coverage for "any defect in or lien or encumbrance on the title." However, the Court agreed with the Defendant that the landmark regulation was an exercise of governmental power to regulate the property's use or development, not an "impairment on title to a property, i.e., the right to unencumbered ownership and possession." Second, the Plaintiffs argued that coverage was afforded

under Covered Risk 5, which provides coverage for loss or damage based upon the violation or enforcement of any law, ordinance, permit, or governmental regulation. The court disagreed, however, because Covered Risk 5 covers violations only if a notice of violation or enforcement is recorded in the Public Records. Since the landmark designation was not recorded until August 2020, approximately 5 years after the date of the policy, the Plaintiffs had no claim under Covered Risk 5.

In addition to not falling into one of the categories of Covered Risks, the Court agreed with the defendant title insurer that the claim was expressly excluded from coverage under Exclusion 1(a) of the policy. This Exclusion disclaims coverage for loss arising from any law, ordinance, or governmental regulation relating to the occupancy, use, or enjoyment of the Land.

The Court cited other New York cases holding that zoning regulations, local sanitation regulations, and even deed restrictions that limit the permissible uses of a property are governmental regulations that do not create defects in title. This is similar to Orders of Condition in Massachusetts, which regulate certain activities under the Wetlands Protection Act. As set forth in *Lyon v. Duffy*, 77 Mass. App. Ct. 860 (2010), an Order of Conditions pertains to the use of property, and is not a defect in title that affects marketability. The regulations in question are also similar to municipal requirements for landlords who want to convert their rental properties to condominium units, such as the one enacted by the City of Somerville in 2019 which is the subject of ongoing litigation. Like Orders of Condition, these laws affect the use of the property – and may affect its value or the ability to sell – but are not title defects that would be covered by the title insurance policy.

If you would like a copy of the decisions referenced above, feel free to contact one of our underwriting counsels.



October National Agency Webinars

Topic: Latest Best Practices for Your Payoff Verifications

Wire fraud is a critical issue facing the title industry. As your underwriter, protecting your transfers is a top priority. That's why Stewart partners with CertifID.

Join either of the one-hour sessions to learn how CertifID's new PayoffProtect solution can simplify your mortgage payoff verification process, and help you achieve 95%+ validation success rates in just 2 minutes.

Matt Kilmartin, VP of Sales at CertifID, will cover the challenges faced in verifying payoffs, how the PayoffProtect validation software engine works, recent fraud detected and prevented with this tool, and much more.

Date: October 19, 2022 at 2:00PM

To register: [Click here to register](#) for this webinar. You will receive a **You're Registered** email from Microsoft Teams which will include your link to join this event.

Click on the attachment in the You're Registered email to add this webinar to your calendar.

Topic: Navigating Stewart's Virtual Underwriter and Special Alert Database

Join Stewart for a one-hour webinar focusing on how to navigate through the Virtual Underwriter website and how to utilize the Special Alerts database.

Learn more about the features and benefits offered through this easy to use, award-winning program, including, searching for bulletins, state real estate practice guides, locating standard exceptions, using the underwriting manual, guidance on special alerts, and much more!

Date: October 20, 2022 at 12:00 PM

To register for this webinar: [Click here to register](#) for this webinar. You will receive a You're Registered email from Microsoft Teams which will include your link to join this event.

Click on the attachment in the You're Registered email to add this webinar to your calendar.

For questions about either of these education offerings, please contact Gloria Prinz, Agency Training Manager at gprinz@stewart.com



Fall Happenings in Massachusetts

Halloween at deCordova – Lincoln, MA: Experience the deCordova Sculpture Park (a Trustees of the Reservation Property) by moonlight at this family-friendly event! This annual program features hands-on sculpture-building activities with deCordova faculty, self-guided mysteries to solve with friends and family, and a sweet treat or two along the way. Bring a flashlight and experience the sculpture park in a new light as you explore the grounds after hours. This event happens on both Friday 10/21 and Friday 10/28. Tickets must be purchased in advance.

To view more about the event follow this link: <https://thetrustees.org/event/79023/>

Mike's Maze at Warner Farm – Sunderland, MA: What's more fun than finding your way through an 8-acre corn maze? The maze is open weekends through early November. Located on a working farm at the foot of Mount Sugarloaf, Mike's offers more than just a maze. There's horse drawn wagon rides, a huge playground for the kids, and a café to enjoy lunch after you've worked up an appetite finding your way out of the maze.

Tickets are required, and can be purchased online at <https://mikesmaze.com/>



200 5th Avenue, Suite 301, Waltham, MA 02451

Phone: 800-628-2988 Fax: 781-697-3336

Tiziano Doto, MA & RI Agency Services Manager - tiziano.doto@stewart.com

Jutta R. Deeney, VP, New England Regional Underwriting Counsel - jutta.deeney@stewart.com

Christine Provost, MA Associate Senior Underwriting Counsel - christine.provost@stewart.com

Tracie Kester, MA Underwriting Counsel - tracie.kester@stewart.com

Paula M. Cuculo, RI Underwriting Counsel - paula.cuculo@stewart.com

Eileen O'Shaughnessy, RI Underwriting Counsel – eileen.oshaughnessy@stewart.com

General MA Underwriting Mailbox - massuwing@stewart.com

Tracy Hawkins, MA Agency Sales Representative Sr. - tracy.hawkins@stewart.com

Mary Blomerth, MA Agency Sales Representative Sr. - mary.blomerth@stewart.com

Laurie Goodwin, MA Agency Sales Representative - laurie.goodwin@stewart.com

Lyslie A. DeMeo, RI Agency Sales Representative Sr. - ldemeo@stewart.com

Michelle Radie-Coffin, NH Underwriting Counsel and State Manager - michelle.radiecoffin@stewart.com