



Dear Stewart Partners,

We hope your weather (and ours) will start to cooperate and give us some of those crisp Fall days for apple picking and attending football games. New England deserves some nice weather after the damp summer.

In this week's update, we are providing two short summaries on easements and short sales, along with information about some important security updates for your Apple products. We hope you find this helpful. In addition, we are reminding you that most registries of deeds/Town land records will be closed, next week on Monday for the Columbus/Indigenous Peoples Day holiday on October 9th. Your Stewart agency offices are open and will be here to assist with your underwriting needs.



Easement Review

Generally, an easement provides someone with the legal right to use someone else's property for a specific purpose. When reviewing a title commitment, we often see easements that either encumber or burden the subject property, or benefit (are appurtenant to) the subject property. The property that is burdened by the easement is the servient estate and the property that benefits from the easement is the dominant estate. Easements that encumber or burden the subject property show up as exceptions on the commitment and policy. For example, the adjoining property may have an easement which gives that property the right to have a portion of its driveway cross over the subject property. When easements benefit or are appurtenant to the subject property they are often included in the legal description of the property as a "together with" items. In other words, the subject property is conveyed together with an easement. Sometimes, an easement can benefit and burden a property simultaneously. Perhaps there is an easement in favor of Property A which permits Property A's driveway to encroach on Property B, but the owner of Property A also has an obligation to maintain the driveway and insurance with respect to the same. In this case, the easement would be a "together with" item on the legal description of the commitment and policy, and also be shown as an exception to title. It is important to remember that if a client is requesting that an appurtenant easement be insured along with the fee parcel on a policy of insurance, the land upon which the easement is located, must also be searched to confirm insurability and to identify any exceptions that may need to be taken relative to the servient estate.

Typically, easements are permanent and run with the land and therefore continue to burden or benefit (as the case may be) the property if the property is transferred, regardless of whether the easement was mentioned in the deed. However, easements can be terminated. If an easement is no longer needed by a benefitted property, the easement can be terminated in writing by all affected parties (benefited property owner(s) and burdened property owner(s)). Easements may also terminate without the need for a written document through merger, abandonment or if the need for the easement has ended (please note, however, the requirements for these types of terminations may differ from state to state). Sometimes easements are created for a limited duration and can expire when the specified period ends, such as temporary construction easements that terminate once a construction project is complete.

The easements mentioned above are express easements since they are created by grant pursuant to an agreement between the owners of the dominant and servient estates. There are other ways for easements to be created. Prescriptive easements are not created by written agreement. Rather, a prescriptive easement is acquired pursuant to a similar mechanism as ownership rights acquired by adverse possession. By way of example, Parcel A does not have access to a public road. However, for the last twenty years, Parcel A has been accessing a public road by crossing Parcel B using a road located on Parcel B that leads to the public road. Parcel A never received Parcel B owner's permission to use the Parcel B road, and has been doing so openly, notoriously and continuously for the past fifteen years. Under these circumstances (again, depending on state specific requirements), Parcel A may have a prescriptive easement to use the Parcel B road. However, unlike property acquired by adverse possession, there is no ownership interest in Parcel B, only an easement right. Similar to acquiring title via adverse possession over a fee parcel, in order to establish that one has successfully obtained prescriptive rights, a judicial decree is necessary.

Implied easements are another type of easement not created by grant pursuant to a written agreement. Implied easements are implied by law when certain conditions are satisfied (including a need for the easement). These types of easements often arise when a large parcel of land is split into smaller parcels, resulting in a landlocked parcel. The landowner who divided the large parcel may have intended to reserve a right in favor of the resulting landlocked parcel to cross over the severed parcels to reach a public road, but such right was inadvertently never documented. Please note that in either case of a prescriptive or implied easement, the court will ultimately determine if such an easement exists after reviewing several conditions and factors.

Stewart's Virtual Underwriter has additional information about easements in its Underwriting Manual and can be accessed here:

https://www.virtualunderwriter.com/en/underwriting-manuals/2014-2/UM00000003.html#SubTopics_1

This is just a brief overview of easements. There are issues and factual circumstances that may arise in particular transactions which are beyond the scope of this summary. Always feel free to reach out to a Stewart underwriter for further assistance.



Short Sales

While many homeowners have plenty of equity in their property, short sales do still happen. When a homeowner owes more on their mortgage than the value of their home, they may need to turn to a short sale in which they apply to their lender to accept less than the full amount due on their outstanding mortgage debt. Although we didn't see short sales for a while, we've noticed an uptick in questions from our agents on short sales, leading us to believe they are happening with more regularity than in the past. Considering this, we thought it would be helpful to review the short sale process and provide some tips to avoid pitfalls.

Generally, the homeowner and their realtor get the ball rolling on the short sale by submitting an application to their lender. This can be a long process with a lot of back and forth between the seller and the short sale lender. If you are working with a buyer, setting expectations on the time line may be a good idea, because closing can take longer than a traditional sale.

Once the application has been approved, you, as conveyancing attorney or title issuing agent, need to review the approval letter and request a payoff from the lender. If the property is in foreclosure, you will need to obtain the payoff from the foreclosure attorney. Read these letters very carefully as they contain many specific requirements and conditions that, if not fulfilled, can result in a rejection of a payoff or rescission of the short sale by the lender. There are typically limits on the amount of broker's commissions, payoffs to junior lienholders and allowance of proceeds to the seller. In most cases, the seller may not receive any proceeds from the transaction. It is not uncommon though, for the seller to receive funds for their relocation. These amounts must appear on the closing disclosure and approved by the short sale lender.

If the seller is in active bankruptcy, an order from the bankruptcy court specifically allowing the short sale must be obtained. You may be able to proceed if the court discharges the debtor or dismisses the bankruptcy entirely prior to the consummation of the sale, but you would need to check in your Stewart underwriter before insuring if the bankruptcy proceeding isn't closed.

Other situations you may encounter are flip transactions, restrictions on subsequent sales and compensation for short sale intermediaries. Again, review the approval letter from the short selling lender for requirements in these instances. Sometimes, the conditions of the sale set forth in the short sale approval letter, may require special exceptions to be placed in the title insurance policy. If you have any questions, always reach out to your Stewart Underwriter.

Stewart has also issued an Underwriting Bulletin on the topic of Short Sales and the underwriting guidelines relative to insuring a buyer purchasing property that is a short-sale for the seller. This bulletin can be viewed here:

<https://www.virtualunderwriter.com/en/bulletins/2011-3/BL130037439100000044.html>

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PATCH NOW: Apple released critical updates

Last week Apple released urgent security updates for iPhones, iPads, Macs, Apple Watch, and Safari users to patch against three vulnerabilities that Apple reports are being actively exploited.

The three vulnerabilities include a flaw in WebKit (the browser engine that powers Safari); a certificate validation bug that can allow a malicious app to bypass signature validation; and a bug that allows an attacker to gain broader access to the core of the operating system. These three vulnerabilities form part of an exploit chain, where the bugs are used together to gain access to a target's device.

The patch is available for both iOS 16 and 17, WatchOS, iPadOS, and MacOS Ventura. Patch as soon as you can!



COLUMBUS/INDIGENOUS PEOPLES DAY HOLIDAY ON OCTOBER 9th

All New England states, except Vermont, observe the Columbus/Indigenous Peoples Day as a state holiday on October 9th.

Please note, however, that our local offices are open and your state underwriting counsels in New England will be available for underwriting questions.



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