



**New England Regional Midweek Update**  
**11/29/2023**

Dear Stewart Partners,

We hope you all had a wonderful holiday and were able to spend quality time with family and loved ones.

In this week's Mid-Week Update, we are pleased to announce an addition to our Stewart Underwriting Team in New England. Please join us in welcoming Attorney Mark Jones.

Also, we have included information on a new threat from cybercriminals called callback phishing. Understanding the risk of this new scam and increasing awareness helps protect you and your business from becoming a victim. Lastly, we are republishing a post from the past as a refresher for our New Hampshire issuing agents on current use taxation and the impact this lien has on titles and title insurance. We've recently received a number of questions on this topic, and hope you find this article useful.



### **Welcome Mark A. Jones to the Stewart Underwriting Team**

We are pleased to announce the addition of Mark A. Jones to our New England underwriting team. Mark joins Stewart as an Associate Senior Underwriting Counsel supporting our agents in Massachusetts and Rhode Island. Mark is an attorney with over 20 years of experience in real estate and title law and is a seasoned title insurance underwriter. Mark started his career in the title insurance industry almost two decades ago with Stewart and held roles with the agency division and commercial services. We are thrilled to have him back. Prior to rejoining Stewart in 2023, Mark served in several positions at another national title underwriter, including as agency underwriting counsel for Massachusetts and as a national commercial services underwriting counsel. Mark also operated his own real estate conveyancing practice in Massachusetts. Mark's varied experience as a title insurance underwriting counsel combined with his understanding and knowledge of operating a conveyancing practice makes him uniquely situated to provide the best-in-class service for our agents and partners for all their residential and commercial transactions.



## **Callback Phishing**

The Federal Bureau of Investigation (FBI) released an official advisory earlier this month after observing a rise in callback phishing attacks.

Callback phishing involves the use of seemingly legitimate communication channels, such as emails, messages, or even phone calls, to deceive users into revealing confidential data. The most common scenario involves tricking victims, typically via email, to call a number instead of clicking on a link. Typically, if the number is called, the cyber criminal will try to trick the victim into providing sensitive information and downloading legitimate system management tools such as remote access programs. Once the legitimate software has been installed, cybercriminals install ransomware onto the device and perform other malicious activities.

Callback phishing messages are different from convention phishing scams because they do not contain clickable images or links, rather, they create a sense of urgency for a certain matter and instruct you to call a phone number, usually within a certain timeframe. Recipients are often sent an email relating to a pending charge on an account or an urgent account notification requiring immediate attention.

These types of scams are becoming increasingly popular because they can evade anti-phishing content filters. With many of these callback phishing messages, the entire message is one big picture and most anti-phishing content filters cannot “read” the text in the picture nor can they read the phone number and determine if it is malicious or not.

To shield against callback phishing, it is important to always verify the legitimacy of unexpected communications, especially those that contain a sense of urgency. Similar to preventative measures we recommend for other cyber threats, always double-check email addresses, scrutinize message content and avoid making hasty decisions when faced with an urgent, unexpected email. Also, avoid calling phone numbers provided in suspicious emails – instead, navigate to an official website and find an appropriate contact number to call.

To read more about callback phishing attacks and to see examples of these specific types of phishing emails, visit KnowBe4’s article entitled “[\[HEADS UP\] FBI Warns About Callback Phishing](#)”.



## **New Hampshire-RSA 79-A Current Use Taxation**

We frequently receive questions about land in “current use” in New Hampshire and what needs to occur before a real estate transaction can close. The current use program was enacted in 1973 and encourages landowners to preserve open space by taxing the land based upon the value as currently used, instead of assessing it at its highest and best use, resulting in lower real estate taxes for qualifying land.

For real estate to qualify for current use classification, the land must be at least 10 acres in size or provide \$2500 per year in agricultural or horticultural products. There is an exception to the 10-acre requirement if the land is unimproved wetlands; in that case, the wetland can be any size. For example, a pond might qualify for current use taxation. Once land is classified as current use, that land remains in current use classification until a disqualifying event occurs. Upon a disqualifying event, or voluntary removal from the program, a land use change tax penalty must be paid. As with other municipal tax liens and obligations, this lien is not terminated by foreclosure of a mortgage.

In order to obtain this reduced tax benefit, the landowner must submit an Application for Current Use (Form A-10) to the Town assessing office. In fine print on page 2 of the Form A-10 the following language appears: "I/We do firmly understand that by enrolling land under current use assessment that a contingent lien is created on the tract or parcel and should the use of the above-described land be changed to a non-qualifying use, that the owner of record at the time of the change in use is liable for the land use change tax." [emphasis added].

This program is similar to the Massachusetts Chapter 61, 61A or 61B lien that was the subject of an article in January. (To view this article, follow this link: [new-england-update-1-18-23.pdf \(stewart.com\)](#)). A significant difference, however, is that in Massachusetts a notice of the municipality's lien is filed with the land records; in New Hampshire, the town records only the Application in the land records. In other words, practitioners need to review the abstract carefully since the lien may not be scheduled as a lien, it may only be noted as an "application."

Further complicating matters is that the Application is only recorded under the initial applicant/landowner's name, yet the current use lien remains on each transfer of the property. A buyer who purchases the property subject to current use inherits the lien (and receives the benefit of the reduced taxation). In some instances, the closing agent handling the transaction has noted on the deed that the land is "subject to current use taxation recorded at Book/Page." This reference would alert future abstractors to the lien. Often, however, the application creating the lien is recorded well before the required search period, and so the best way to find out whether the land is subject to the current use lien is to inquire with the town and review the tax cards carefully.

If you are handling a purchase and the land is remaining in current use, or if your transaction is a refinance, you will need to take exception for the current use lien on Schedule B-2 of your title commitment and on Schedule B-1 of the final owner and loan policy. If the property is coming out of current use because of a disqualifying event (e.g., the lot is being subdivided and no longer meets the 10-acre requirement), then you must collect the land use change tax "penalty" as part of the settlement transaction and this should be set forth in the title commitment's requirements section, which is Schedule B-1. This land use change tax is 10% of the full and true value of the land at the time the use changes. However, this may not be the same as the sale price of the property, and because the town assessing office has up to 18 months to determine the value you may not have an exact figure of the amount due at the time of your closing. If the assessing office is unable to provide an invoice with the amount due in time for a closing, it will be necessary to hold sufficient funds in escrow. Many closing agents will use 10% of the selling price with a buffer of an additional 5% of the sale price. For any questions related to current use, please contact your Stewart underwriter for assistance.

For additional information including links to Department of Revenue promulgated forms please visit the links below:

<https://www.revenue.nh.gov/current-use/>

<https://www.revenue.nh.gov/current-use/documents/cu-booklet-2023-2024.pdf>



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