



New England Regional Midweek Update  
5/21/2025

Dear Stewart Partners,

This weekend marks the unofficial start of summer, and we want to wish all of you a happy and safe Memorial Day. We are grateful for the men and women who served and sacrificed their lives in service to our country. Please also remember that long weekends are targets for fraudsters seeking to perpetuate wire fraud scams. These long weekends are particularly dangerous because fraudsters have an extra day to abscond with funds. Please stay diligent and watch out for any red flags.

This week we will be discussing a proposed (and not finalized) Massachusetts Department of Revenue regulation which would establish a withholding requirement for nonresident real estate sales as well as two proposed Rhode Island Title Standards that are on their way to full approval. We hope you find this information useful and, as always, we are happy to answer any questions you may have on these topics as well as any other underwriting questions you may have for us.

We also want to remind you of the upcoming REBA's Women's Networking Group event benefiting the Women's Lunch Place which will be held on June 5, 2025. Stewart is, once again, a proud sponsor of this fun and worthwhile event. If you haven't yet purchased tickets, information and a link is provided below.

Lastly, this week's Midweek update also includes a link to the next installment of Massachusetts Underwriters Talk Title. Mark Jones, Esq., Massachusetts and Rhode Island Associate Senior Underwriting Counsel will be discussing Waterfront Properties on June 4 at 11:00 a.m. If you are not able to attend the live webinar, the recording will be available on Stewart Academy.



**Massachusetts Department of Revenue Proposes New  
Withholding Requirement for Nonresident Real Estate Sales** By:  
Rhonda L. Duddy, Esq., Massachusetts and New Hampshire  
Underwriting Counsel

The Massachusetts Department of Revenue (DOR) has proposed a new regulation, 830 CMR 62B.2.4, which introduces new withholding requirements on certain real estate sales in Massachusetts by non-residents. This proposed regulation, if finalized, is set to take effect for closings occurring on or after June 1, 2025.

The proposed rule would apply to non-resident individuals and entities, which are defined as individuals or businesses without a continuing business presence in Massachusetts, for sales or exchanges of Massachusetts real estate with a gross sales price of \$1,000,000.00 or more.

If the regulation goes into effect, non-resident individuals and entities that sell real estate worth \$1,000,000.00 or more in Massachusetts will be required to have taxes withheld at the time of sale. The amount to be withheld is generally based on the net gain from the sale. Net gain is defined as the gross sales price minus the sum of the property's adjusted basis and expenses directly related to the sale. If the seller is subject to the withholding tax, the tax rate would be 5%, plus an additional 4% on the amount of the seller's net gain that exceeds the surtax threshold. If the seller is subject to the corporate excise, the tax rate will be 8%. During the hearing process, one of the criticisms of the proposed regulation is that determining the correct withholding may be difficult because frequently the net gain will not be known on the day of sale as the adjusted basis is not always known by the seller and determinations may require an accountant or tax professional.

The proposed regulation will also require that for every sale or exchange of Massachusetts real property for \$1,000,000.00 or more, each seller must complete a Transferor's Certification and give it to the withholding agent on or before closing. The proposed regulation defines "withholding agent" as "the person responsible for closing a real estate transaction, including an attorney, escrow company, or title company, or any other person who received and disburses the consideration or value for a transfer of real estate."

The seller must certify the net gain amount on the Transferor's Certification, as well as attest to any applicable exemptions from, or reductions to, the withholding requirement. If multiple sellers are involved, each must provide a separate Transferor's Certification, and withholding would be calculated individually based on each seller's share of the net gain.

The withholding agent will then be required to file a Nonresident Real Estate Withholding return (Form NRW) along with other documentation, such as the Transferor's Certification and the Settlement Statement, and remit the amount collected electronically via MassTaxConnect within 10 days of the closing. If no withholding is required, the withholding agent will still need to file Form NRW reporting zero tax due. The withholding agent may rely in good faith on the information provided in the Transferor's Certification.

Sellers may be exempt from withholding or eligible for a reduced withholding amount, but they must indicate same on the Transferor's Certification they provide to the withholding agent at or before closing.

The following types of Transferors qualify for exemption:

1. A full-year Massachusetts resident, as defined in 830 CMR 62B.2.4(5)(b);
2. A pass-through entity;
3. A publicly traded partnership;
4. An estate of a resident decedent or a resident trust as described in M.G.L. c. 62, § 10(c);
5. A corporation with a continuing Massachusetts business presence, as defined in 830 CMR 62B.2.4(4)(c)1, or a member of a combined group where one member of such group has a continuing Massachusetts business presence, as defined in 830 CMR

62B.2.4(4)(c)1, and, in either instance, the requirement set forth in 830 CMR 62B.2.4(4)(c)2 is also met;

6. An organization qualified under Code § 501 and exempt from tax in Massachusetts, unless the Transfer results in unrelated business taxable income, as defined under Code § 512, to the Transferor;
7. An insurance company that is subject to the provisions of M.G.L. c. 63, §§ 20 through 26;
8. The United States Government, the commonwealth or any political subdivision thereof, or their respective agencies;
9. The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company;
10. Any financial institution, as defined in M.G.L. c. 63, § 1, that maintains a place of business in Massachusetts; and
11. A real estate investment trust under Code §§ 856 through 859, provided that the proceeds from the trust's sale of real estate are distributed to the trust's shareholders in the form of dividends derived from the sale of real estate.

There are several circumstances where the amount required to be withheld may be reduced or eliminated. These exceptions can be found in 830 CMR 62B.2.4(5) and include the following:

- Sales where the required withholding amount is greater than the amount by which the sales price exceeds amounts used for the payment of the seller's debts secured by a mortgage or other lien on the property that are paid at the closing;
- Foreclosure sales where the sales price does not exceed the debt secured by the property held by a mortgagee or lienholder;
- Certain involuntary or compulsory conversions of property under Code § 1033;
- Sales where the property is only partly located in Massachusetts; and
- Sales where a portion of the gain is not recognized under M.G.L. c. 62 or M.G.L. c. 63.

A withholding agent that fails to meet its withholding obligation shall be subject to penalties and if any amount of withholding is not paid to the Commissioner on or before the due date, interest will be assessed on the amount that should have been withheld. The placement of liability upon the settlement agent has also been criticized during the public hearing process.

We will continue to keep you updated on this proposed regulation.

The proposed regulation can be found here: [Proposed Regulation Link](#)



**Proposed New Rhode Island Title Standards Should Be Effective Soon** By: Eileen C. O'Shaughnessy, Esq., Rhode Island Underwriting Counsel

Two new Title Standards have just been published in the RI Bar Journal, which is the penultimate step toward becoming official standards. Once the comment period has

expired, in this case June 1, 2025, the proposed standards go back to the Executive Committee of the Real Estate Title Standards and Practices Committee of the Bar Association for final approval.

### **Proposed Standard 3.21: Bail Recognizance Liens**

This standard will provide the Rhode Island real estate practitioner relief from a sometimes onerous chase for a discharge of a bail recognizance lien for a surety from one of the state courts. The statute currently provides for no expiration of the lien, stating that the lien exists on the property “until the attorney general or clerk of the family or district court executes a release of the lien.” For a lien that has been on record for a long time, getting the information needed to obtain the release from the state can be a daunting and time consuming task. Even with the information available, the state can move at a snail’s pace and the lack of action can delay a closing.

Proposed Title Standard 3.21 removes the requirement of obtaining a discharge for a bail recognizance lien that has been on record for more than 10 years “provided that (a) there is no record notice of an action pending to enforce the lien, and (b) no party to the transaction has actual knowledge of pending or threatened enforcement proceedings.” The logic behind this is that a criminal proceeding is highly unlikely to remain pending for over 10 years and the risk of the state trying to enforce the lien after that time period is miniscule.

### **Proposed Standard 8.3: Describing Subdivided Land**

This standard provides a framework for revising a legal description once land has been subdivided and the plan has been recorded. Going forward from the recording, the new parcel should be described with reference to the lot/lots on the newly recorded plan. The description can either identify the new lot designation or set forth the metes and bounds description as appearing on the plan or it can include both. The property should not be described by using the pre-subdivision description.

The standard also sets forth that “Unless the plan actually labels a street as “Private Right of Way” or words to that effect that show no intent to dedicate the street, it should be presumed to be dedicated to the public” and gives the public rights to those streets.

If the street on a subdivision plan is shown as private, the owners of the lots on the plan have an easement over those streets. The lot owners have title to the centerline of the private street unless the deed into them indicates otherwise.

This should standardize and remove any questions regarding how to describe newly subdivided land.



**Massachusetts Underwriters Talk Title Series June 4, 2025**

Please join us for another installment of our monthly webinars that will be at 11:00 a.m. on June 4. To register, follow this link: [Register Here](#)

Mark Jones, Esq., Stewart's Massachusetts and Rhode Island Underwriting Counsel, will lead this month's segment on insuring waterfront property and how to address the rights of others in water abutting or running through the property.



**Join Us at REBA Women's Networking Group Annual Women's Lunch Place Fundraiser on June 5, 2025**

Join the REBA Women's Networking Group for their [11th annual fundraiser](#), benefitting the [Women's Lunch Place](#), which inspires hope and supports the development of self-sustaining skills for women experiencing hunger, homelessness and poverty. This team trivia and dinner event is from 6 to 9 pm on Thursday, June 5th at Women's Lunch Place, 67 Newbury Street, Boston. Stewart, once again, is a proud sponsor of this event and will be in attendance! We hope to see you there. For more information and to register, [click here](#).



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