

Dear Stewart Partners,

We hope you were able to spend some time with family and friends this Memorial Day weekend. In this Mid-Week Update, we are providing a further discussion on waterfront properties in Massachusetts, along with information on updates to the REBA Title Standards and Forms that were adopted at the recent spring conference.

We're also passing along information about the Norfolk Registry of Deeds transcription service for older recorded documents, as well as providing an update on the new withholding requirement in Massachusetts for non-resident sales of real estate. Finally, we're providing information on a recent Special Alert issued by Stewart relating to property in Providence, Rhode Island.



Massachusetts Waterfront and the Exception to the General Rule
-“Province lands” in Provincetown By: Mark A Jones, Esq.,
Massachusetts and Rhode Island Associate Senior Underwriting
Counsel

Continuing with my series on waterfront properties in Massachusetts I would be remiss if I didn't include a discussion on one of the exceptions to the Colonial Ordinance. In Massachusetts the owner of waterfront property typically owns to the low water mark but no farther than 1,650 feet. This ownership, however, is subject to the rights of the public to pass over the shore for the purposes of fishing and fowling, to pass over the shore in boats and other vessels and to swim or float in tidal waters. These rights stem from the Colonial Ordinance of 1641-1647. In Provincetown, however, there is an exception to the general rule that waterfront ownership extends to the low water mark.

The Provincetown charter of 1727 did not provide the new town with authority to grant land to its settlers. St. 1893, section 470 (presently found in [Massachusetts General Laws, Chapter 91, Section 25](#)) divided the Province Lands into two parts. The "town" is the coast west of Howland Street and the "wild lands" is the area to the northeast of Howland Street. On the "town" side of the former Province Lands, private ownership of property is limited to the area landward of the historic mean high water mark. So, west of Howland Street, land seaward of the historic mean high water mark is Commonwealth tidelands.

The location of the historic high water mark as of 1848 has been delineated on maps prepared under contract to the Department of Environmental Protection (DEP). Links to these maps can be found here: [Historic Mean High Water](#). As I discussed in a previous article, structures built on waterfront property would require a Chapter 91 license. DEP will

use the mapped line as the presumptive line of jurisdiction in its determinations of which structures and uses along the shoreline of Provincetown Harbor require Chapter 91 licensing. If you look at these maps you will see that there are many structures built far beyond the historical high water mark that would presumably be underwater if not for a significant amount of fill. Suffice it to say that any waterfront development work can be somewhat challenging anywhere in the Commonwealth of Massachusetts let alone Provincetown.

The good news for a conveyancer is that the exception you take in the title policy for oceanfront property in Provincetown will be the same for any property that falls under the Colonial Ordinance. The main difference is that under the Colonial Ordinance the landowner owns to the low water mark whereas in Provincetown that ownership is limited to the high water mark. For title insurance purposes you will want to take the following exception in Schedule B of the title insurance policy:

--Rights of the public in [insert name of navigable waterway] for fishing, fowling, and navigation.

Additionally, depending on the type of body of water, there may be other exceptions that are appropriate and should be added to the policy of title insurance. Virtual Underwriter lists a number of possible exceptions that may be applicable. To view these exceptions, simply access the exceptions directory of Virtual Underwriter under the Exceptions tab. For quick access, follow this link: [Standard Exceptions](#). In this directory, you will find not only water exceptions (found under "W"), but an entire directory from A-Z of standard exceptions for common and not so common matters that impact title.

As always, reach out to one of our underwriters if you have any questions. Also, mark your calendars for June 4, 2025 as I will be presenting a webinar on Waterfront Properties and how to properly insure them. To sign up for the webinar, follow this link: [Register Here](#)



Updated Title Standards and Forms Adopted at REBA'S Spring Conference By: Tracie Kester, Esq. Massachusetts Associate Senior Underwriting Counsel

At the Real Estate Bar Association (REBA) spring conference on May 12, 2025, the membership adopted updates to one of the REBA Forms and two of the Title Standards, as well as a new Title Standard.

The update to Form 17, Disclosure Concerning the Massachusetts Homestead Act, involved the recent increase in the amount of the declared Homestead exemption from \$500,000 to \$1,000,000.

Title Standard 4, regarding Tax Titles, was updated to address the recent changes to M.G.L. c. 60 which were enacted in response to the Supreme Court case of Tyler v. Hennepin County.

Title Standard 41, which addresses when conveyancers can rely on a listing of heirs, was updated to add a comment noting that the form numbers used in the Standard may change

from time to time.

Finally, new Title Standard 86 regarding MassHealth Liens and Notices of Claim was adopted. This new Standard lets conveyancers know when an unreleased Notice of Lien filed with the Registry of Deeds or a Notice of Claim filed with the Probate Court by MassHealth (the Executive Office of Health and Human Services) causes title to be defective.

REBA members can access Title Standards and Forms online at www.REBA.net



Norfolk County Registry of Deeds – Transcription of Older Documents By: Tracie Kester, Esq. Massachusetts Associate Senior Underwriting Counsel

Many are familiar with the rich colonial history in Massachusetts, and as Mark notes in his article on waterfront properties, we have ordinances dating back to the 1600's that still have meaning today.

Norfolk County in particular has an abundance of documents from the 1700's, including a deed to Paul Revere of property in Canton, and several deeds involving Presidents John Adams and John Quincy Adams. Registrar William O'Donnell wrote an article on Notable Land Records that you can read on the Registry's website here: [Notable Land Records](#)

The Registry has also transcribed images of all their recorded land documents from 1793 through 1900, taking the older cursive writing and putting it into typed format so that it's easier to read. To that end, when accessing older documents at the Norfolk Registry, you'll see additional icons that will let you "view transcription," "print transcribed image," and "add transcribed image to cart." While of course no warranty is made as to the accuracy of the transcriptions, these documents should make it easier for conveyancers to decipher some of the ancient handwritten deeds recorded in Norfolk County.



Update to Massachusetts Department of Revenue Withholding Requirement for Nonresident Real Estate Sales

Our May 21, 2025 mid-week update included information on a proposed regulation in Massachusetts requiring withholding on certain sales of Massachusetts real estate by non-residents. The regulation applies to real estate closings occurring on or after June 1, 2025. According to the Department of Revenue website, the "requirement [of withholding] will not go into effect on June 1, 2025. DOR anticipates it will go into effect later in 2025. Non-resident sellers may still have to make an estimated tax payment under the current rules." You can view the announcement on the DOR website here: [Proposed Withholding Requirement](#)

We will continue to update you on the status of the proposed regulation as we learn more.



Stewart Special Alert – 84 Harrison Street, Providence, Rhode Island

In case you missed it, on May 27, 2025, Stewart issued a Special Alert directing agents not to close any transactions involving the property at 84 Harrison Street, Providence, Rhode Island 02909 (Providence County) or Spencer Scanlon. If you have any transactions involving this property or individual, please reach out to your Stewart Underwriter for further guidance prior to insuring.

You can review this bulletin on Stewart's Virtual Underwriter website here: [Special Alert: SA2025169](#)



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