



Dear Stewart Partners,

The New England team wishes you all a happy and safe 4th of July holiday. We hope you find some time to relax and enjoy all that our short summer has to offer. As a reminder, Stewart offices will be closed on Friday, July 4.

We can't emphasize enough how important it is to stay vigilant during this short week, as cybercriminals see busy long weekends as a perfect opportunity to strike. In this week's update, we are providing information on forgery protection for commercial properties as well as information for the Massachusetts agent on railroad rights of first refusal and construction restrictions.

In addition, you will find information and a link to register for our upcoming webinar on Shortened Title Searches, which will be presented by Rhonda Duddy, Massachusetts and New Hampshire Underwriting Counsel, on Wednesday, July 9. Also, Tracie Kester, Associate Senior Underwriting Counsel will be presenting a REBA Webinar on Friday, July 11, on Title Traps, and we've included information below.

We hope this information proves useful and, as always, we are happy to answer any questions you may have on these topics.



Forgery Protection for Commercial Properties – the Stewart Post-Policy Forgery Endorsement By: Tracie M. Kester, Massachusetts State Counsel and Associate Senior Underwriting Counsel

As you may know, the 2021 ALTA Homeowner's Policy (sometimes referred to as the "enhanced" or "expanded coverage" policy) provides coverage for a loss caused by forgery or impersonation after the Date of Policy. See covered Risks 3 and 5 of the ALTA Homeowner's Policy of Title Insurance.

While the Homeowner's Policy can only be issued for land that is improved with a 1-4 family residential property, this does not mean that owners of improved commercial properties cannot get similar forgery protection. The STG Post-Policy Forgery Endorsement, a Stewart proprietary endorsement, is available in all of the New England States provided the property is an existing, improved commercial property (not residential property).

The endorsement insures against loss or damage sustained by the Insured if an unrelated third party, after the Date of the Policy, claims to own an interest in the Land, has rights affecting the title, or has a lien on the title because of "impersonation of the Insured or

forgery of the Insured's signature by an instrument recorded in the Public Records." There is a maximum-dollar amount of liability for this post-policy coverage, which is the lesser of (a) \$3,000,000 or (b) twenty-five percent (25%) of the Amount of Insurance.

This endorsement should only be issued with respect to the 2021 standard form of the owner's policy (not any prior versions), and is not available for issuance with a loan policy. It should not be used if the property being insured is vacant land or residential property. However, whenever you are insuring improved commercial property, you should consider attaching this endorsement to the owner's policy since there is no additional premium charge for this endorsement in the New England states.

Follow this link to view the endorsement on Stewart's Virtual Underwriter website: [STG Post Policy Forgery Endorsement \(with 2021 ALTA Owner's Policy\) \(7-1-21\)](#)

To read the state-specific Bulletins regarding this endorsement, please follow the links below:

Connecticut: [Bulletin: CT2021007](#)

New Hampshire: [Bulletin: NH2022003](#)

Maine: [Bulletin: ME2022003](#)

Rhode Island: [Bulletin: RI2021003](#)



Railroad Rights of First Refusal and Restrictions By: Rhonda L. Duddy, Esq., Massachusetts and New Hampshire Underwriting Counsel

There are two Massachusetts statutes to be aware of that affect former railroad property:

1. MGL c. 161C, §7, which grants the Secretary of Transportation a right of first refusal on the proposed sale, transfer, or disposition of railroad property; and
2. MGL c. 40, §54A, which requires the written consent of the Secretary of Transportation before a building permit may be issued for any construction on land formerly used as a railroad right of way or related appurtenant property.

Right of First Refusal (MGL c.161C, §7)

In accordance with M.G.L. c. 161C, §7, all railroad rights of way or related facilities offered for sale by railroad companies must first be offered in writing to the Commonwealth. The offer must include the proposed sale price of the rights of way or facilities, and any other terms proposed to be included as part of the sale. The railroad company is free to sell its rights of way or facilities to a third party if the Commonwealth declines the offer, or 90 days elapse after the date of the offer without action from the Commonwealth.

The railroad company may not, however, sell the rights of way or facilities to a third party on more favorable terms than were offered to the Commonwealth. It is common to see documentation recorded in the chain of title of properties that are impacted by the Commonwealth's right of first refusal under this statute, to show compliance.

From a title insurance perspective, if you are asked to insure land which was once a railroad right of way or railroad related facilities, and the record doesn't disclose compliance with the statute, you should contact your Massachusetts state underwriting counsel for guidance.

Construction Restrictions (MGL c.40, §54A)

In accordance with MGL c.40, §54A, no building permit may be issued for land that was formerly part of a railroad right of way or related property without first obtaining the written consent of the Secretary of the Department of Transportation (DOT). The building inspector must submit a formal request for consent and must include detailed information about the proposed project, including plans showing the former railroad and plans for the construction of the proposed project. The DOT will then review the submission, schedule a public hearing, and issue a written decision approving or denying the request.

Some railroad rights of way were granted in fee (full ownership), while others were easements (legal rights to use land owned by another party for railroad purposes). The statute defines "former railroad right of way" to include both land formerly owned in fee as well as easement based rights of way. This can create a permitting problem because it relates to former railroad rights of way, which may not be revealed by an inspection or may have been further back in the chain of title than a 50-year title examination would reveal. As such, cases have been filed in the courts in which recently constructed buildings are later determined to have been built without the benefit of the DOT's consent.

Massachusetts courts have held that if a right of way was granted as an easement and is no longer used for its original purposes, the easement may be deemed abandoned and terminated. Many abandoned railroads in Massachusetts have been converted to rail trails under the federal Rails to Trails program. These projects often involve the interim use of rights of way as public trails, preserving the corridor for possible future rail use.

In *Murray v. Mass. Department of Conservation & Recreation*, 475 Mass 670 (2016), the court was asked to decide whether an easement authorizing the running of a portion of an old railroad over a stretch that included the plaintiff's property had been abandoned. The plaintiffs filed a quiet title action in Land Court claiming that a railroad easement across their property had been abandoned and that the land should revert to them free of the easement. The easement originated in the 19th century and had not been used by a railroad since 1972. Ownership of the railroad's interests had since transferred to the Massachusetts Department of Conservation and Recreation, which sought to use the corridor for a public trail under the rails to trails program. The plaintiffs were not able to provide evidence that a certificate of abandonment had been issued so they could not prove that the federal abandonment process had been followed. The Land Court cannot determine whether a rail line has been legally abandoned unless a certificate of abandonment has been issued and since there was no proof, the Land Court lacked jurisdiction to grant the plaintiff's request. As such, the case was dismissed.

With respect to title insurance and MGL c. 40, §54A, former railroad ownership is not considered a defect in title which may be covered by title insurance, but it may affect marketability. This was affirmed in *Somerset Savings Bank v. Chicago Title Ins. Co.*, 420 Mass. 422 (1995), where the court held that MGL c.40, §54A does not impact legal title, only use and marketability. The issue in this case was whether the government exclusion

clause of the title policy includes, by its terms, an exception to this requirement. Title insurance policies exclude coverage for any law, ordinance, permit or governmental regulation (including those related to building and zoning) that restricts, regulates, prohibits, or relates to the occupancy, use or enjoyment, dimensions or locations of improvements on the Land.

In the *Somerset* case, the plaintiff bank issued a mortgage on the property located in Revere. The land had formerly been used as a railroad right of way. After the City of Revere issued a building permit to the owner to construct a condominium project, the Attorney General instructed the City to halt the construction because the required consent from the DOT under MGL c.40, §54A had not been obtained. The plaintiff bank then filed a claim under its title insurance policy. The defendant denied coverage on the ground that the effect of MGL c.40, §54A was not an insured risk under the policy. The court held that the statute imposes a use restriction, not a defect in title. Therefore, the statute did not create an encumbrance, lien or defect that would trigger title insurance coverage. The title insurance policy only covered defects in title, not governmental restrictions on use or zoning laws.

Special care should be taken when the former railroad property appears in your chain of title. You should look for easement language, reversionary clauses, and any reference to railroad use. A thorough title search should also include a review of historical maps. You will also want to confirm whether the right of way was formally abandoned and whether the federal government or the Commonwealth may retain interests. If your title search reveals any evidence of former railroad ownership or use, please contact your underwriter prior to issuing a commitment or policy. For more information on railroad rights of way, follow this link to Stewart's Underwriting Manual: Railroad Right of Way section found in Virtual Underwriter: [Railroad Right Of Way](#).

There is also a section in Virtual Underwriter that provides Railroad Requirements and Exceptions to be included when issuing policies and commitments. [Railroad Requirements and Exceptions](#)



Upcoming Education

Our Massachusetts Underwriters Talk Title Series – Upcoming July Webinar

Join us for our monthly webinar coming up on Wednesday, July 9, 2025 that will focus on Shortened Title Searches. Rhonda Duddy, Massachusetts and New Hampshire Underwriting Counsel, will be discussing the requirements, benefits and potential risks of not performing a full 50-year title search. To register for this or any of our upcoming Talk Title webinars, follow this link: [Register Here](#)

REBA Webinar – Title Traps for the Unwary: Claim Avoidance Strategies

Tracie Kester, Associate Senior Underwriting Counsel at Stewart, will be presenting a webinar on behalf of REBA's Residential Conveyancing Section on Friday, July 11, 2025 at noon entitled "Title Traps for the Unwary: Claim Avoidance Strategies." The webinar will cover divorce, probate and bankruptcy related title issues; common traps involving

tenancies, trusts and POAs; and best practices to clear titles and avoid claims. The webinar is free to REBA members. To register, contact Matt Zarrella at Zarrella@REBA.net.



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