



New England Regional Midweek Update
1/25/2023

Dear Stewart Partners,

In this week's update, we are again providing you with some Stewart resources we hope you find useful including an invitation to two upcoming webinars on the new ALTA 2021 forms, information on upcoming New Hampshire Bar Association Real Property Section events, guidance on New Hampshire's "current use" taxation program, and a summary of a recent Maine Supreme Court case involving a residential foreclosure. Our New England underwriting team is planning future educational webinars focusing on some back-to-basics skills on title commitment and title policy preparation. These presentations will be a good refresher for the seasoned title professional and serve as a great introduction for those newer to the industry. Be sure to check future Mid-Week Updates for information and registration links for these webinars.



Upcoming Stewart Webinars on ALTA 2021 Forms

Please join us February 2, 2023 at 10:00 A.M., and again February 9, 2023 at 10:00 A.M. for one-hour live webinars designed to answer all of your questions about the new 2021 ALTA Title Insurance Policy forms. The first webinar will cover the 2021 basic Owner's and enhanced Homeowner's Policy forms. One (1) hour of CLE credit available in Connecticut, Vermont, and New Hampshire for both sessions. The second webinar will cover the 2021 Basic and Expanded Loan Policy forms. Stewart's underwriters from New England States will provide the presentations.

Topic: 2021 Basic Owner's and Homeowner's Policy Forms – What You Need to Know

Date: Thursday, February 2, 2023

Time: 10:00 a.m.

Register: [Click here to register](#)

Topic: 2021 Basic and Expanded Loan Policy Forms – What You Need to Know

Date: Thursday, February 9, 2023

Time: 10:00 a.m.

Register: [Click here to register](#)



New Hampshire Bar Association Real Estate Section Events

The New Hampshire Bar Association Real Property Section will be hosting a meeting in March to focus on finalizing a draft of the obsolete mortgage statute to be presented to the Bar's Legislation Committee and the Board of Governors. The date and location of the March meeting has not been finalized. Please look for emails from the NHBA for the details of this upcoming event.

On January 12th, members of the Real Property and the Corporation, Banking, and Business Law Sections of the New Hampshire Bar Association met with members of the New Hampshire Society of Certified Public Accountants for a business networking event at the Manchester Historic Association's Millyard Museum. The event was an opportunity to bring members together and foster business and social connections.

The following link is to the NH Bar Association's CLE and events calendar

[CLE & Events Calendar \(nhbar.org\)](http://nhbar.org)



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 taxes on qualifying land.

To qualify for current use classification, the land must be at least 10 acres 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. As with other municipal tax liens, 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 last week's mid-week update. 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 your title commitment and 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. 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 money 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:

[NH Dept. Of Revenue Current Use Board Information](#)

[NH Dept. Of Revenue Current Use Handbook](#)



Recent Maine Decision Affirms Strict Scrutiny in Maine Residential Mortgage Foreclosures

Maine has become known over the last decade as "borrower-friendly" in the context of residential mortgage foreclosures. Whereas some states allow such mortgages to be quickly foreclosed without litigation, Maine's statutory scheme and court rules mandate that all residential foreclosures occur through a complicated and time-consuming judicial process. Various recent Maine court decisions indicate that strict compliance with these statutes and rules are necessary in order to prevail in a foreclosure action in Maine. A recent Maine Supreme Judicial Court decision, decided in November of 2022, closely follows this line of cases.

In Janusz v. Bacon, 2022 ME 57, Francis and Maryann Janusz attempted to foreclose a private mortgage against Eric Bacon's residential property in Crawford, Maine. The Januszes sought a judgment of foreclosure from the trial court by summary judgment, which does not require a trial. In so doing, they were required to file a written motion with the court establishing numerous specific facts, including that they were the owners of the note and mortgage, that Bacon had defaulted on the loan, that they had given Bacon the required notice to cure, that he failed to do so, and that the parties had completed court-sanctioned mediation. Bacon did not file an objection to the Januszes' motion for summary judgment. The trial court granted the motion and issued a judgment for foreclosure.

Bacon appealed to the Maine Supreme Judicial Court arguing that the Januszes' motion for summary judgment failed to establish that mediation was "completed." Even though Bacon never objected to the Januszes' motion for summary judgment, the Maine Supreme Judicial Court vacated the judgment, noting that the Januszes' motion merely stated that the parties had "engaged" in an unsuccessful mediation. It further reasoned that "[a]lthough the trial court [was] neither required nor permitted to independently search a record to find support for facts offered by a party . . . the trial court has an independent obligation to ensure compliance with the rules for a summary judgment of foreclosure." See M.R. Civ. P. 56(j) Advisory Note – August 2009. The case was thus returned to the trial court, presumably for mediation to be completed before the Januszes could again seek a judgment of foreclosure by summary judgment or trial.

Although no issues of title are directly implicated in this decision, the Maine Supreme Judicial Court made clear that it, and the Maine trial courts, will continue to closely scrutinize all aspect of residential mortgage foreclosures in Maine. Agents are therefore encouraged to carefully review all necessary details when issuing title insurance policies in which the chain of title includes a mortgage foreclosure. Please do not hesitate to reach out to Stewart's Maine State Underwriting Counsel, Zachary Greenfield, Esq., with any related questions.

You can read the full decision here: [Janusz v. Bacon, 2022 ME 57](#)



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