



New England Regional Midweek Update
4/12/2023

Dear Stewart Partners,

We hope you have been able to enjoy the recent warmer temperatures and have had the opportunity to spend some time outdoors. Baseball is in full swing, and the Boston Marathon is right around the corner on Monday, April 17. Did you know that The Boston Marathon is the world's oldest annual marathon, held since 1897, and New England's most-watched sporting event? In addition to the marathon, it is also Patriot's Day, which is celebrated in some New England states, and we've included information on recording office closures in our update below.

This week we are featuring a recent case out of the Maine Supreme Judicial Court whereby the Court confirmed an important rule for effectively drafting warranty deeds. In addition, we are providing useful summaries of Maine's Improvident Transfer of Title Act and NH's homestead considerations when dealing with revocable trusts.

Finally, we have included two items of general interest. The first is a link to an upcoming webinar presented by ALTA entitled: Marketing Tips for Title Agents with Limited Resources. The second item is information for E-closing users about the need to re-validate Stewart Connect credentials. Read below for full details.



Maine Supreme Judicial Court Answers Certified Question on Warranty Deeds

In *Kneizys v. FDIC*, 2023 ME 20, decided on March 9, 2023, the Maine Supreme Judicial Court answered a discrete question of law certified to it by the U.S. District Court for the Western District of Washington. Following protracted litigation in multiple courts over competing chains of title to four adjacent parcels in Baileyville, Maine, the federal court certified the following question to the Maine Supreme Judicial Court:

[W]hether, under Maine law, any warranty is implied by the use of the term “Warranty Deed” to describe an instrument which “grants . . . real property with the buildings and improvements thereon . . . being the same premises conveyed to GRANTOR” by prior deed . . . and, if so, which warranty or warranties are implied.

Stated differently, does a deed titled “Warranty Deed” convey the premises with warranty covenants if the body of the deed fails to contain the words “with warranty covenants”? After determining it would accept the certified question, and construing the language of the

Maine Short Form Deeds Act, 33 M.R.S.A. §§ 761-774, the Maine Supreme Judicial Court responded as follows:

We answer the certified question as follows: “No warranty is implied by the use of the term “Warranty Deed” to describe an instrument which “grants . . . real property with the building and improvements thereon . . . being the same premises conveyed to GRANTOR” . . . by prior deed.”

The obvious takeaway, particularly when working with buyers, is to be certain that the words “with warranty covenants” appear in the body of deeds intended to convey the premises with warranty covenants. Failing to do so could have significant consequences. To read the full decision, follow this link: <https://casetext.com/case/kneizys-v-federal-deposit-insurance-corporation>



Primer on Maine’s Improvident Transfer of Title Act

Maine’s Improvident Transfer of Title Act, M.R.S.A. 33 §§ 1021-1025, first enacted in 1988, is designed to protect the elderly against undue influence and financial exploitation in connection with the transfer of title to real estate and other assets. To accomplish that goal, the Act creates a presumption of undue influence when an unrepresented elderly person (defined as being 60 years of age or older) transfers real estate or other assets totaling 10% or more of the elderly person’s estate to a transferee with whom the elderly person has a confidential or fiduciary relationship for less than fair market value.

The Act defines confidential and fiduciary relationships to include (a) family relationships, (b) official fiduciary relationships such as those with a guardian, conservator, trustee, accountant, broker, or financial advisor, (c) health care-related relationships such as those with doctors, nurses, and other health care providers, (d) mental healthcare-related relationships such as those with psychologists, social workers, and counselors, (e) attorney-client relationships, (f) spiritual relationships such as those with rabbis and priests, (g) relationships with paid and unpaid service providers, (h) friends and neighbors, and (i) residential co-habitants.

In a civil action commenced under the Act, if the elderly transferor or their personal representative successfully establishes a presumption of undue influence, the burden of disproving undue influence by a preponderance of the evidence falls upon the transferee. Failure to satisfy that burden can result in an order of rescission or reformation. As such, the implications for title insurance are very significant.

Title and closing agents should always be on alert for evidence of undue influence in pending transactions. Specifically, whenever a seller is sixty or older, and the buyer has an existing relationship with the seller, the best approach is to encourage the seller to obtain independent legal representation. If parties with an existing relationship are unwilling to secure independent legal counsel for an elderly seller, extreme caution must be taken before proceeding. Stewart Title Guaranty Company’s underwriters are always available to assist with this and other such issues. Additionally, Maine Legal Services for the Elderly (<https://mainelse.org/>), which is a non-profit corporation that engages in a variety of

activities designed to protect the elderly against exploitation, may also be a good resource. It can be reached at 1-800-750-5353.



Primer on Homestead Rights in NH when dealing with Revocable Trusts

Homestead rights in New Hampshire must be addressed in every deed and in every mortgage. The homestead right applies to a primary residence and benefits the titled owner and any non-titled spouse, automatically. The value of the homestead right is presently \$120,000. NH RSA 480:1. Homestead rights have priority over mortgages and liens, with the exception of purchase money mortgages and property tax liens. The failure to properly release these rights is a significant source of claims especially in the bankruptcy and foreclosure context. Therefore, it is extremely important to make sure you properly address them in each transaction. A tricky area is dealing with a revocable trust and whether a conveyance out of a revocable trust needs to address homestead rights. The relevant statute provides as follows:

NH RSA 480:9 Homestead Rights. – A conveyance of real property by deed to one or more trustees of a revocable trust shall not result in the loss of homestead rights of any person executing the deed (unless the deed contains an express release of homestead rights by such person) provided that such retained homestead rights in any such property shall not be enforceable against any other person to the extent such other person acquired an interest in or lien on the property after its conveyance into the trust without having notice of the revocability of the trust. Such notice may be given by the inclusion of the word "revocable" in the name of the trust as recited in the deed, or by the recitation in the deed or a subsequently recorded document that at the time of the conveyance the trust was a revocable trust.

In addition to the statute, New Hampshire has a title standard on point which provides further clarification:

NH Title Standard 5-5 Homestead Release and Revocable Trusts. Effective January 1, 1998, a deed to one or more trustees of a named revocable trust or a trust that provides notice that its terms are revocable does not release homestead rights of the grantors, unless the deed contains an express release of homestead rights by the grantors and their spouses. A subsequent deed or mortgage from one or more trustees of a revocable trust should also be executed by the grantors/settlors and their spouses releasing their individual homestead rights. See RSA 480:9.

The takeaway here is if you have a deed coming out of a revocable trust, you must review the deed into the trust to see if the homestead right was expressly released. If it was not, or if there is no mention of homestead, then the homestead right has been retained by the settlors of the trust and must be released in the deed coming out of the trust. To effectuate this, the trustee(s) must sign in their capacity as trustee(s) and in addition will sign individually for the purpose of releasing homestead. The deed must also contain a recitation(s) as to the marital status of the trustee(s). If the trustee(s) is married, then their spouse must also sign the deed for purposes of releasing homestead.

As always, if you have any questions on this subject or any other conveyancing matter, do not hesitate to reach out to your Stewart underwriter.



Patriot's Day Closures

MAINE: All state, county, and municipal offices are closed on Monday, April 17, 2023 in honor of Patriot's Day. This includes all registries of deeds and probate.

MASSACHUSETTS: All State, county and municipal offices are closed on Monday, April 17, 2023 in honor of Patriot's Day. This includes all registries of deeds and probate and land court.



ALTA Insights: Marketing Tips for Title Agents With Limited Resources

1:00-2:00 p.m. ET | Wednesday, April 12 | [Register Today](#)

Business is down and you've tightened the budget, but now is not the time to slash your marketing efforts. Your company needs a marketing strategy to stay connected to current customers and reach new ones. Register for this free CertifID-sponsored ALTA Insights webinar and hear from an industry expert who will share easy and inexpensive marketing strategies and techniques that won't break the bank or demand too much time. This is a complimentary webinar.

We realize this presentation is today, but we want to get this information to you in the event your schedule will allow you or someone in your office the opportunity to listen. The link to register is above. You will need to create a login with ALTA but there is no fee associated with this process or to watch the webinar. In addition, ALTA has a resource for all their free webinars. You will find them here <https://www.alta.org/education/webinars.cfm>



Changes Impacting E-Closing Title Product Software Users

Recently we informed you that we are making some technological changes to some of Stewart's core systems and updating our CPL and policy jacket portal to Stewart Connect. Users of our integration with E-Closing will see no change to their process to produce CPLs and policy jackets. However, users will be required to validate their Stewart Connect credentials in E-Closing after the transition takes place this coming Monday April 17, 2023. Instructions to perform this task are contained in the steps below:

Step 1: Your Stewart Connect user name is your email address. You will need to set your own password. Click [here](#) for instructions to create your Stewart Connect password, then

go to the [Stewart Connect](#) portal to perform this step.

Step 2: Go to E-Closing. Enter your Stewart Connect user name (email address) and your newly created password into the E-Closing integration. Click [here](#) for instructions to enter your credentials in E-Closing.

Should you need assistance completing Steps 1 or 2, do not hesitate to contact your Agency Service Representative.



[Meet Our Team | Stewart Connecticut](#)

[Meet Our Team | Stewart Maine](#)

[Meet Our Team | Stewart Massachusetts](#)

[Meet Our Team | Stewart New Hampshire](#)

[Meet Our Team | Stewart Rhode Island](#)

[Meet Our Team | Stewart Vermont](#)



1-800-STEWART
www.stewart.com

® 2023 Stewart. All rights reserved.

This email was sent to your address because your email preferences are set to receive our updates.

[unsubscribe](#)