



Dear Stewart Partners,

With Spring just around the corner, we hope you are enjoying your last few bits of winter. In this Mid-Week Update, we discuss conveying real estate during probate administration in New Hampshire, a recent Maine Supreme Judicial Court decision involving municipal tax liens, and an upcoming NELTA seminar on bankruptcy issues in real estate transactions. We are also providing information on a recent Special Alert issued regarding a property in West Yarmouth, Massachusetts.



Conveying Real Property During Probate Administration in NH

By: Michelle Radie-Coffin, Esq., NH State Counsel & State Manager

In New Hampshire, title passes to the devisees or heirs of the decedent immediately upon the death of the decedent. However, the title is subject to defeasance by the appointed fiduciary acting either with the consent of devisees under the will or, in the case of an intestate estate, with the consent of the heirs. In cases when the estate is insolvent, or when disputes arise among the devisees/heirs, the court may grant a license to sell upon motion by the appointed fiduciary.

New Hampshire Title Standard 7-19. Conveyance During Administration. During the pendency of probate administration, conveyances of the decedent's real estate by the executor or administrator shall be made pursuant to a license from the Circuit Court - Probate Division, unless the power to sell the real estate is given to the executor in the will. *Rollins v. Rice*, 59 N.H. 493 (1880). However, after August 26, 1977, conveyances of the decedent's real estate by the executor or administrator not under a power in the will may be made without a license from the Circuit Court - Probate Division if made with the written consent of the surviving spouse and heirs at law or devisees, or their guardians or conservators, unless the will otherwise provides. Any deed by a devisee or by an executor under a power contained in the will during the pendency of probate administration is subject to the claims of creditors and the power of the Circuit Court - Probate Division to sell the property to pay debts. See RSA 559:17, 18 and 19 and the cases cited thereunder.

This Title Standard has caused confusion amongst NH conveyancers as well as out-of-state attorneys dealing with the probate of NH real property. The most common conveyance out of an estate in NH is by fiduciary deed with consent of the devisees (testate) or heirs (intestate). We see this type of conveyance most frequently because typically the language in a will does not contain the specific direction or authorization to sell that rises to the level

in *Rollins v. Rice*, 59 N.H. 493 (1880) and in subsequent cases citing *Rollins v. Rice*. When the testator **directs** the executor to sell property, neither a license to sell nor consents are required. One must be careful to review the language in the will and where doubt or ambiguity exists, it is best to err on the side of caution and obtain consent. NH RSA 559:18.

Any sale made under RSA 559:18 shall convey title to said real estate free from all claims of creditors of the decedent and of all other persons claiming under the decedent or under his will, but the claims of all such persons shall be a charge upon the proceeds of the sale. The proceeds of such sale shall be accounted for to the probate court and, except for such deductions as the court may make for the payment of debts, legacies, inheritance taxes, and expenses of administration, shall be paid over on distribution of the estate to the person or persons who would have been entitled to such real estate and in the proportions to which they would have been entitled had it not been sold. NH RSA 559:19

If the real property of the decedent has not been sold before the estate is closed, then a deed of that property once the estate is closed would no longer come from the estate but would instead come directly from the devisees or the heirs. Keep in mind that if the estate is still open, the property must be transferred out of the estate. This is true even if the probate file includes the form entitled Notice to Towns and Cities. This form is required to notify towns and cities when the deceased's property is passed to someone else through inheritance or conditions of a will. The form must be filed with both the town/city where the property is located and the probate court, prior to filing the final account. RSA 554:18-a. This form is not a "title" document, meaning it does not act to vest title but simply puts the town or city on notice that the property has transferred to the named devisees or heirs. If the estate is open, even with this document being filed, the sale of the property must be by deed from the estate. Finally, and some out-of-staters find this quite odd, NH does not use deeds of distribution when the property passes to devisees or heirs. For example, if Bob and Bill are devised 111 Jay Street, NH in the will, the record at the registry of deeds will not show a deed into them. Remember, the property would pass to Bob and Bill upon death of the testator subject to defeasance by the fiduciary acting in his/her capacity as such. When Bob and Bill go to sell, their deed out will simply reference the estate whereby they were devised 111 Jay Street. Some say this creates a gap and in fact it does when searching the registry of deeds. The probate file must and should "close" the gap.

Given that NH handles property coming out of an estate differently than its bordering states, please do not hesitate to reach out to your Stewart underwriter for clarity and guidance.



**Maine Supreme Judicial Court Issues Title-Related Opinion By:
Zachary Greenfield, Esq., Maine State Counsel**

In *Estate of Priest*, 2025 ME 24 [Estate of Brian Priest](#) Maine's highest court considered the impact of a municipal quitclaim deed issued prior to the automatic foreclosure of a municipal real estate tax lien. Before reviewing the case, however, the following primer on Maine's statutory scheme for municipal real estate tax liens will be helpful:

- When a Maine property owner fails to pay real estate taxes when due, the municipality is required to mail them a demand for payment within 30 days. If, after 30 days, the account remains delinquent, the municipality is required to mail and

record a tax lien notice, which begins an 18-month redemption period. Between 30 and 45 days before the right of redemption expires, the municipality is required to mail the owner, among others, a notice stating that the lien will automatically foreclose at the conclusion of the redemption period. If the taxpayer pays the amount owed before the expiration of the redemption period, the municipality is normally required to record a discharge of the lien. If the taxpayer pays the amount owed after the expiration of the redemption period – and the municipality accepts that payment – the municipality is normally required to record a quitclaim deed to the owner given that title vested in the municipality upon expiration of the redemption period. These rules are found at 36 M.R.S. §§ 943, et seq.

Brian and Lisa Priest owned property as joint tenants with rights of survivorship in Pembroke, Maine. In 2002, they fell behind on their taxes. As such, the Town of Pembroke recorded a lien against the Priests' property. The Priests paid the delinquent taxes within the 18-month redemption period, whereupon the Town executed and recorded a quitclaim deed (as opposed to a discharge of lien). That deed did not identify Brian and Lisa as joint tenants. If that deed had been effective to convey the property, it would have severed the joint tenancy. The Priests again fell behind in 2009, and the Town again recorded a lien against the property. Within the 18-month redemption period, the Priests paid the delinquent taxes, and the Town again issued a quitclaim deed without joint tenancy language instead of a lien discharge. Brian Priest died intestate in 2021.

Brian's daughter and Lisa Priest filed competing petitions in probate court. Brian's daughter took the position that the tax liens and subsequent quitclaim deeds severed Brian and Lisa's joint tenancy, thereby terminating Lisa's right of survivorship. Lisa, on the other hand, sought reformation of the quitclaim deeds to include joint tenancy language, presumably because the Town would not have intended to sever the joint tenancy. The probate denied Lisa's request for reformation on the basis that she failed to introduce any evidence of the Town's intent, granted Brian's daughter's petition, and appointed Brian's daughter as Personal Representative. In so doing, the probate court failed to address the fact that the Priests had paid off both tax lien balances before the redemption periods expired. Lisa appealed to the Maine Supreme Judicial Court.

On appeal, the Maine Supreme Judicial Court found that the tax liens had not foreclosed because they were paid before the redemption periods expired, that the quitclaim deeds issued by the Town therefore simply had the effect of discharging the liens, and that the joint tenancy was thus never severed.

From a title insurance perspective, this case highlights the fact that the form of instrument issued by a municipality after the payment of delinquent real estate taxes is not necessarily dispositive of the resulting rights of present or former owners of the property. Each situation must be analyzed upon its particular facts to determine the status of title. If ever you should have a question about the implications of a municipal tax lien, municipal tax lien discharge, or municipal quitclaim deed, we encourage you to contact your Stewart underwriter.



On Thursday, March 20, 2025, from 12:00 p.m. to 1:00 p.m., NELTA will host a virtual event during which Chief Bankruptcy Judge Peter Cary and attorney John Doonan will discuss real estate issues in bankruptcy. To register, follow this link:

<https://nelta.org/event/25LLMarch>



Stewart Special Alert – 78 Rainbow Road, West Yarmouth, MA

On March 13, 2025, Stewart issued Special Alert SA2025101 regarding property located at 78 Rainbow Road, West Yarmouth, Barnstable County, Massachusetts. The Alert also refers to Rita Hansberry. To read the Special Alert, follow this link: [Special Alert SA2025101](#)



[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-STEWARD

www.stewart.com

© 2025 Stewart. All rights reserved.

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

[unsubscribe](#)