

Dear Stewart Partners,

We are seeing more spring-like weather, and a welcome uptick in the real estate market. In this week's Mid-Week Update, we are providing information on Chapter 91 Waterfront Licenses in Massachusetts. Also, as part of our ongoing series in dealing with undischarged mortgages in the chain of title, we are providing information on the Massachusetts mortgage discharge statute, MGL c. 183, s. 55 and how it can assist with clearing title. We are also including information on a recently issued Stewart Special Alert for property in Bath, Maine. Finally, we are including information on an upcoming MCLE webinar featuring Stewart's Jutta Deeney and Tracie Kester which will be held on April 7, 2025.

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



Massachusetts Waterfront Chapter 91 Licenses By: Mark A. Jones, Esq., Massachusetts and Rhode Island Associate Senior Underwriting Counsel

A brief history.

In Massachusetts, with some exceptions, the owner of waterfront property 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. From 1647 to 1869, the Legislature passed hundreds of special acts that authorized the filling of tidal flats and the building of wharfs. In 1869, the legislature changed the rules and made any authority or license to build any structure or to fill tidelands revocable at any time and would expire at the end of five years from its date. Currently, the Commonwealth's primary tool for the protection and promotion of public use of its tidelands and waterways is Massachusetts General Laws Chapter 91.

What activities are regulated and require a License?

The following activities would require authorization:

- Structures - Placement or construction of any structure, regardless of size, whether permanent or seasonal. Examples of typical structures include, but are not limited to: piers, wharves, dams, seawalls, weirs, booms, breakwaters, bulkheads, ripraps,

revetments, jetties, piles, lines, groins, roads, culverts, bridges, buildings, parking lots, cables, pipes, conduits, tunnels, wires, floats, etc.

- Filling - Placement of any unconsolidated materials that is confined or expected to remain in place in a waterway, except for material placed by natural processes. Such placement includes material placed for the purposes of shoreline protection, beach nourishment, or subaqueous disposal of dredged spoils.
- Dredging - Removal of materials, including but not limited to rocks, bottom sediments, debris, sand, refuse, plant or animal matter, in any excavating, cleaning, deepening, widening, or lengthening of any waters in the Commonwealth. The Department must also know the location where the removed material will be disposed.
- Change in Use - Any use of the authorized premises or structures for a purpose unrelated to the authorized use, whether express or implied. An example of such a change in use would be the conversion of a commercial fishing establishment to an office building.
- Structural Alteration - Any change in the dimensions of a structure or fill from the specifications contained in the existing authorization.
- Demolition/Removal of Structures - Approval is required for removal of any unauthorized structure or fill that was previously not authorized or for which there is not a current and valid grant or license.

How do we deal with a Chapter 91 license in a title insurance policy?

As noted above a Chapter 91 License can be revoked and is not considered an “interest in real estate” for title insurance purposes. Therefore, it is not an insurable interest that can be included in Schedule A as an insured matter in a title insurance policy, and an exception should be taken in Schedule B of the policy for the Chapter 91 license. One might wonder then how we are able to insure all the property in the Back Bay of Boston as this land is all filled land. That is true, however, one must keep in mind that the Back Bay in Boston fill project began in 1856, which predates MGL Chapter 91 as amended. As conveyancers you’ll most likely see these Licenses for docks on residential properties. The key to remember is that these licenses and the benefits they might provide to a property are not insurable interests in land, and the Schedule B of the title policy should note the license (which is recorded) as an exception.

Below is the text for M.G.L. Chapter 91, Section 15:

Revocation and expiration of authority or license; exception; mortgageable interest

Section 15. Every authority or license granted since eighteen hundred and sixty-eight or hereafter granted by the commonwealth to any person to build a structure or do other work in, over and under the Connecticut River or the nontidal part of the Merrimack River or in, over or under the waters of any great pond or at any outlet thereof below high water mark, or upon ground over which the tide ebbs and flows, or to fill up or to enclose the same, whether such ground is above or below low water mark, or within or beyond one hundred rods from high water mark, or whether private property or property of the commonwealth, shall be subject to the following conditions, whether expressed in the act, resolve or license granting the same or not. Said authority or license shall be revocable at the discretion of the general court, or by the department for noncompliance with the terms and conditions set forth therein. The license shall expire as to all work authorized or licensed not completed

within five years from the date of such authorization or license or such other period of time specified therein; provided, however, that for good cause shown the department may extend, without public hearing or notice, the construction period of the authorization or license for one or more one-year periods. Revocation by the general court of licenses issued after January first, nineteen hundred and eighty-four shall be treated as a taking of real property requiring payment of just compensation in accordance with the provisions of chapter seventy-nine for valuable structures, fillings, enclosures, uses or other improvements built, made or continued in compliance with said authorization or license. Except as provided herein, the grant of a license pursuant to this chapter shall not convey a property right, nor authorize any injury to property or invasion of rights of others. A license issued pursuant to this chapter is hereby made a mortgageable interest lawful for investment by any banking association, trust company, savings bank, cooperative bank, investment company, insurance company, executor, trustee, or other fiduciary, and any other person who is now or may hereafter be authorized to invest in any mortgage or other obligation of a similar nature.

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.



Dealing with Unreleased Mortgages in Massachusetts – Discharging by Affidavit under MGL c. 183, s. 55 By: Tracie Kester, Esq., Massachusetts Associate Senior Underwriting Counsel

Over the past few months our mid-week updates have included resources for dealing with undischarged or incorrectly discharged mortgages in each of the New England States. In our [January 29, 2025 update](#), I wrote about MGL c. 260, s. 33, the Massachusetts obsolete mortgage statute. In this week's update, I want to provide information on the Massachusetts mortgage discharge statute, [MGL c. 183, s. 55](#).

MGL c. 183, s. 55 obligates a mortgagee, servicer, or note holder who receives payment of a mortgage to record a proper discharge within 45 days of receipt of that payment or to provide the discharge to the person transmitting the payoff. If the discharge is provided to the person transmitting the payoff, and that person is not a closing attorney or settlement agent, the mortgagee is required to provide a notice in boldface type alerting the recipient to the need to record the discharge. This is an improvement over the prior practice of lenders sending the releases to borrowers without letting them know they needed to record them, and many lenders do record them at the Registry. As conveyancers know, however, that doesn't mean the problem of undischarged or incorrectly discharged mortgages in the chain has lessened.

If you have a client with an undischarged mortgage on record, Chapter 183, s. 55 does offer some avenues to fix this, by way of the "discharge by affidavit" process. Section 55(g) contains the steps that must be taken, and the Massachusetts Real Estate Bar Association (REBA) has promulgated forms that correspond with the statutory requirements.

Note that this section of the statute only applies to a mortgage on 1-4 family residential property; it would not be applicable to a commercial real estate mortgage.

The attorney signing the affidavit does not have to be the attorney who paid the mortgage off. Pursuant to Section 55(g)(1)(iv) of the statute, the attorney preparing the affidavit merely needs to be in possession of the documents evidencing payoff. The documentation can include a cancelled check, confirmation of a wire transfer, or an affidavit under MGL c. 183, s. 5B from the attorney who did pay the mortgage describing the circumstances of the payoff.

Once the attorney is in possession of this documentation, they can send a notice to the mortgagee, mortgage servicer, or note holder receiving the payoff of the intent to record an affidavit discharging the mortgage under Section 55(g)(1)(vii).

The notice is sent by certified mail, and it must include copies of the payoff documentation, along with the proposed unsigned affidavit of discharge. The notice should also be sent to the mortgagee of record if the payoff was sent to a note holder or servicer. After the notice has been sent, the attorney must wait 45 days, and assuming no objection is received from the lender, the attorney can date and sign the affidavit of discharge and record it. The affidavit should have copies of the notice and backup documentation that was included with the notice. If any of the backup documentation such as the payoff letter or check has account numbers or other identifying information, that should be redacted prior to recording.

As a reminder, if the borrower is in possession of the original promissory note marked paid by the holder, that note can be recorded to discharge a mortgage on a 1-4 family residential property. See MGL c. 183, s. 55(h).



**Special Alert – 53 and 55 W Chops Point Rd, Bath, ME04530
(Sagadahoc County)**

On March 4, 2025, Stewart issued Special Alert SA2025077 concerning properties located at 53 W Chops Road and 55 W Chops Road, in Bath, Sagadahoc County, Maine. The Alert also covers Gary F. Thorne, Kelly S. Thorne, and Alexandria Wilson. You can read the full alert on Stewart's Virtual Underwriter website here: [Special Alert SA2025077](#)



**MCLE Program on April 7, 2025 – Marking Up Title Commitments,
Eliminating Exceptions and Getting Endorsements**

Join Stewart's Jutta Deeney and Tracie Kester, along with Amanda Eckhoff from Robinson + Cole, for a Massachusetts Continuing Legal Education webinar on April 7, 2025 from 1 PM to 4 PM. The panelists will discuss the importance of reviewing a title commitment, negotiating the removal of exceptions, and requesting additional coverage by way of endorsements.

This MCLE does offer continuing legal education credit in various states for this program. For more about credits or to register, go to MCLE's website here: [MCLE website](#)



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