



Dear Stewart Partners,

Happy Lunar New Year! We have much to discuss this week as the beginning of 2025 has been a busy time for the real estate industry. This week's Mid-Week provides information on the updated Massachusetts Deed Indexing Standards which went into effect on January 1, 2025. In keeping with our unreleased mortgage education series, this week we are providing information on dealing with unreleased mortgages in Massachusetts. We are also bringing to your attention a recent scam by fraudsters posing as mortgage lenders targeting homeowners who may have applied for mortgage assistance in the past. We are further providing information with respect to the recently posted draft Mortgagee Letter (ML) issued by HUD relative to partial claim mortgages. While partial claims provide relief for borrowers, they can create challenges when loans are refinanced or sold and are therefore a significant source for claims, which is why we are hoping the ML will reduce some of the confusion related to partial claim mortgages. Lastly, this week's Midweek Update also includes links to some recent Stewart Bulletins and to upcoming educational webinars.



Massachusetts Deed Indexing Standards Update Effective
1/1/2025 By Tracie Kester, Esq., MA Associate Sr. Underwriting
Counsel

The Massachusetts Registrars and Assistant Registrars of Deeds have issued updated Deed Indexing Standards effective January 1, 2025. A link to view the updated Guidelines can be found here: [Mass updated Deed Indexing Standards effective January 1, 2025](#)

Although they are entitled "indexing standards," as the introduction notes, the document also provides guidance on what the Registries will require in order to accept a document for recording. The introduction also explains that local registries may adopt local supplements to the Standards. For those who practice in Massachusetts (or who have occasion to record documents in the Registries of Deeds), you may want to take note of some of the changes summarized below.

Section 1-1, documents which must be acknowledged to be recorded, has a few additions: acceptance of appointment as condo trustee, appointment of condo trustee, mechanic's lien statement of account, and release of lis pendens have all been added to the list.

Section 1-5, out of state acknowledgements and Section 1-6, out of country acknowledgements, have been expanded to include a list of minimum requirements for an

acknowledgement to be acceptable. The acknowledgement must identify the jurisdiction where it was taken, the signature of the officer taking the acknowledgement, the printed name of the officer, the title of the office (e.g., Notary Public), the date of the acknowledgement and the name of the person whose acknowledgement has been taken; and all of this information must be legible.

Sections 3 and 4 of the Standards are new sections but contain information from the prior versions of the Standards. Section 3 deals with addresses on deeds and states that a deed shall not be accepted for recording without the grantee's address (also required by MGL c. 183, s. 6), and that all deeds must contain the address of the property being conveyed clearly labeled "property address."

Section 4 addresses affidavits and confirms that they must be signed "under the penalties of perjury" and do not require an acknowledgement in order to be recorded unless specifically required by statute.

Section 5 is an entirely new section regarding the recording of an antenuptial agreement. It notes that pursuant to MGL c. 209, s. 26, any antenuptial agreement that affects real estate must be recorded at the appropriate Registry of Deeds. The guideline also reminds the parties that this will be a public document and should be drafted accordingly so that private information is not inadvertently disclosed.

There have also been some changes to the requirements for an affidavit by an attorney which are contained in Section 7 of the Standards. To be recorded, the affidavit must be signed under penalties of perjury, certified by an attorney licensed to practice law in Massachusetts, and contain the name, address, and BBO number of the attorney giving the certification. The new guidelines clarify that the attorney making the affidavit and providing the certification under MGL c. 183, s. 5B may be the same person, but the Registrars do prefer the affidavit and the attorney's certificate be in separate sections of the document. Finally, when an affidavit by an attorney has a document attached that would otherwise be recordable on its own, the affidavit must specifically state why the original document is not available for recording.

Section 8 is new and addresses the recording of an attorney's lien. In order to be accepted for recording, the judge approving the motion for an attorney's lien must "specifically state that it may be recorded as a lien against the debtor's real estate."

There has also been a clarification made to Section 10 regarding confirmatory documents. In the past, the Standards required confirmatory documents to contain a reference to the book and page number of the document being confirmed along with an explanation of the confirmatory document's purpose. The updated Standards now require (in addition to the foregoing) that the confirmatory document contain a statement that no other changes have been made from the prior document.

The section on deeds of distribution (Section 15) has been updated to include a list of what the deed must contain. It must contain the name of the decedent, the date of death, the probate court name and docket number, name of the personal representative and the names of the distributees. It must also comply with all other deed requirements in terms of property description, signatures, acknowledgements, etc.

Section 16, dealing with excise tax (a/k/a deed stamps), has been updated to include a list of DOR rulings dealing with deeds excise tax. It also confirms that a non-profit entity is not exempt from paying excise tax.

There is a new section dealing with Easements (Section 18). It reminds practitioners that every easement must contain a recitation of the consideration paid, and excise tax will be charged for consideration in excess of \$100. The section also contains the requirements for recording a Notice of Intent to Prevent Easement, including that an officer qualified to serve civil process certify that they have served and posted the notice in accordance with MGL c. 187, s. 3.

Section 19, which addresses electronic documents, includes references to MGL c. 110G, the Uniform Electronic Transactions Act.

There are also some notable additions to Guideline 28 dealing with mortgages and foreclosures. There are new guidelines regarding the requirements for recording a court order voiding a mortgage or foreclosure and recording an attested copy of a pleading challenging a foreclosure. Section 28-2, entitled "Gap Assignment" states that a document that purports to explain or justify a gap in the chain of assignments of a mortgage may not be recorded. Similarly, Section 28-5 dealing with rescissions of an assignment or discharge states that those documents shall not be accepted for recording.

Finally, Guideline 28-4 republishes the Obsolete Mortgage Statute, MGL c. 260, s. 33. More information on obsolete mortgages in Massachusetts can be found in the article below.



Dealing with Unreleased Mortgages in Massachusetts – M.G.L. c. 260, s. 33 By Tracie Kester, Esq., MA Associate Sr. Underwriting Counsel

Known as the "obsolete mortgage statute," M.G.L. c. 260, s. 33 can help remedy some of those older undischarged mortgages that may still appear in the chain of title. It states that a mortgage cannot be foreclosed under power of sale or by entry after 35 years from the date of recording (if no maturity date is stated in the mortgage) or 5 years from the expiration of the term or from the maturity date stated in the mortgage, unless an extension, or an acknowledgement or affidavit that the mortgage remains unsatisfied, is recorded during that time period. Requirements for the acknowledgement or affidavit are contained in c. 260, s. 34.

As an example, if you encounter a mortgage with a stated maturity date of March 1, 2017, and there is no extension, affidavit, or acknowledgement on record, the mortgage would be obsolete under the statute as of March 1, 2022. Similarly, if your title shows a mortgage recorded on March 1, 1987 but the mortgage has no maturity date, that mortgage would also be obsolete as of March 1, 2022.

If the property is registered land (a/k/a Land Court), and the mortgage would be obsolete under the statute, you can send a request for a discharge notation to the local registry district of the Land Court, along with the discharge recording fee of \$105, to have the

mortgage marked as obsolete on the memorandum of encumbrances. A copy of the form can be found as part of Guideline 61 of the [Land Court guidelines](#). Note that if the mortgage is shown on the face of the Land Court Certificate of Title (as opposed to the Memo of Encumbrances), an S-Petition may be required to remove it.

If the mortgage is not yet obsolete under the statute, and the mortgage was given by the current owner, you may want to ask the owner whether they have any paperwork that might be helpful. In the past, lenders would send the discharge or release document to the homeowner directly without notifying them of the need for recording at the Registry. Sometimes the lender fails to record the discharge but returns the original Promissory Note marked “paid” to the homeowner. Recording the original note marked paid by the holder as evidenced by endorsements thereon or allonges attached thereto will serve to discharge a mortgage on a 1-4 family residential property. See MGL c. 183, s. 55(h).

If you have any questions regarding whether you can issue policies without taking exception for one of these older mortgages in your chain, please reach out to your Stewart Underwriting Counsel.



FCC Advisory – “Green Mirage” Fraudulent Calling Campaign By
Tracie Kester, Esq., MA Associate Sr. Underwriting Counsel

The Federal Communications Commission issued a Consumer Advisory on January 14 alerting consumers to a scam targeting homeowners in all 50 states. Calling the network “Green Mirage,” the FCC Advisory says these scammers call homeowners using the spoofed telephone number of their actual mortgage lender. The callers are armed with information from public records, and apparently target homeowners who may have applied for mortgage assistance in the past. They have impersonated over 400 mortgage lending institutions.

The callers often hint at a foreclosure but claim to be able to help if the homeowner sends money to third parties who are posing as attorneys or uploading funds to a Walmart Green Dot Money Card account. The homeowners often don’t know about the fraud until they receive a notice from their lender that a foreclosure has started.

The Advisory notes that the callers use common first and last names and claim to be calling from a loss mitigation or mortgage lending department. They may also refer to a “homeowner assistance fund program.”

You can read the FCC’s public notice here: [FCC Public notice](#) and the FCC’s advisory here: [FCC Advisory](#)



HUD Draft Letter Proposes Changes to Partial Claim Document Recording and Payoff Statements By Rhonda L. Duddy, Esq.,
Underwriting Counsel Massachusetts and New Hampshire

Last year, HUD reported continued instances of partial claim mortgages being properly recorded, but not detected by title agents. We have issued bulletins, presented webinars and written previous Midweek Update articles with respect to partial claim mortgages so we were happy to see that HUD posted a draft ML on January 8, 2025 establishing an updated procedure for mortgagees to obtain and provide partial claim payoff statements. The ML also extends the time allowed to record partial claim security instruments.

To refresh your memories, a partial claim is an interest-free loan from HUD and it becomes due and payable when the property is sold or refinanced to afford the borrower an opportunity to get caught up on overdue payments. These loans are part of mortgage modification programs offered by various lenders. If approved for a partial claim, HUD then advances funds to the lender to cover the missed payments. This second loan to HUD (partial claim), which does not require monthly payments, must be repaid when the borrower sells the home, refinances or pays off the primary mortgage. Because many borrowers are not making additional monthly payments, and the partial claim mortgages were executed as part of a larger loan modification, they are frequently unaware of the existence of the payment obligation to HUD or that HUD has a lien on the property, which must be paid and a separate and distinct payoff statement from HUD must be received.

The recently posted draft ML indicates HUD is updating two procedural requirements in an effort to provide clarity concerning the total outstanding debt associated with partial claims. First, the time allowed to record partial claim documents is being extended from 5 to 15 days from the date of receipt from the borrower; bankruptcy court approval, if required; or where HUD execution is required, receipt from HUD. Mortgagees must also notify HUD when the first mortgage is being paid in full or refinanced.

Second, HUD is proposing to implement a new process for providing payoff statements. It would establish an updated procedure when the mortgagee of the modified mortgage receives a payoff request for an existing FHA-insured mortgage and there are any outstanding partial claims associated with the mortgage. The ML states the mortgagee must:

- Include a letter with the payoff statement that indicates the borrower has one or more outstanding partial claim(s) or payment supplement(s) and information about how to obtain a payoff statement from HUD; and
- submit the email address and/or fax number where the partial claim payoff statement should be sent in HUD's [SMART Integrated Portal](#) (SIP) – Partial Claim Payoff Dashboard.

Mortgagees will be responsible for ensuring the accuracy of the data entered into SIP and must confirm that the payoff statement has been successfully delivered by verifying the status of the partial claim payoff statements in SIP. When a payoff statement has not been successfully delivered, as indicated in SIP, mortgagees must obtain the partial claim payoff statement from the dashboard in SIP and provide it directly to the requestor. Where partial claims have not been legally recorded and delivered to HUD or a claim has not been filed, mortgagees must produce and provide a payoff statement for any partial claims to the requestor. In addition, mortgagees are required to retain documentation in the servicing file of any payoff statement for partial claim(s) that were provided by the mortgagee.

Lenders have an opportunity to review and provide further feedback to the draft ML through March 10, 2025. To read the draft ML follow this link: [HUD Draft ML](#)

If the proposed ML is implemented by HUD after the comment period, it will help settlement agents and homeowners identify and properly payoff the partial claim mortgages in the closing process and avoid post-closing claims. If you encounter a partial claim mortgage or a loan modification document in your title and are not sure whether an additional payoff is required, please contact your local underwriting counsel.



Recently Issued Special Alert Bulletins:

General – 2025 Reminder Bulletin SLS2025001

Please be sure to check out Stewart's 2025 Reminder Bulletin which was recently sent to all issuing offices. It can also be found by clicking on the link below. This Bulletin contains links to numerous topics of current concern for which Stewart has issued bulletins and provided underwriting guidance.

[Bulletin SLS2025001](#)

Special Alert – All New Hampshire Issuing Offices SA202519

On January 22, 2025 Stewart issued a Special Alert to all New Hampshire issuing offices to not accept any orders, issue commitment or preliminary reports or close any transactions involving the following person or property:

Scott A. Wolfe and Krystal B. Wolf
128 Tioga Road, Hill, NH

To view the Special Alert, follow this link: [Bulletin SA202519](#)



Upcoming Education

ALTA Insights Webinar

ALTA will be hosting a free upcoming webinar for its members at 1:00 p.m. on January 29, 2025 entitled "Guarding Your Closing Funds: Strategies to Combat Wire Fraud." We hope you and your staff will have an opportunity to join and learn about emerging fraudulent schemes and how to prevent the growing threat of wire fraud. Please follow this link to register: [Event Registration](#)

Massachusetts Underwriters Talk Title Series 2025

Please join the first installment of our monthly webinar hosted by members of the Massachusetts underwriting team on February 13. These are concise 30-minute webinars on various topics that impact title insurance and real estate in Massachusetts.

To Register for one or all of our webinars, follow this link: [Massachusetts Underwriters Talk Title Series - 2025](#)

ESTATE TAX LIENS - Thursday, February 13, 2025 @ 11:00 AM -11:30 AM EST

TRUSTS - Wednesday, March 12, 2025 @11:00 AM -11:30 AM EST

ORDERS OF CONDITIONS - Wednesday, April 9, 2025 @ 11:00-11:30 AM EST

PLOT PLANS - Wednesday, May 7, 2025 @ 11:00-11:30 AM EST

WATERFRONT PROPERTIES - Wednesday, June 4, 2025 @ 11:00-11:30 AM EST

USE OF SHORTENED SEARCHES -Wednesday, July 9, 2025 @ 11:00-11:30 AM EST

INSURING OCCUPIED PROPERTIES -Wednesday, August 6, 2025 @ 11:00-11:30 AM EST

MUNICIPAL LIENS - Wednesday, September 10, 2025 @ 11:00-11:30 AM EST

EASEMENTS - Wednesday, October 8, 2025 @ 11:00-11:30 AM EST

SELF DEALING & FIDICUARIES - Wednesday, November 5, 2025 @ 11:00-11:30 AM EST

TENANTS BY THE ENTIRETY - Wednesday, December 10, 2025 @ 11:00-11:30 AM EST



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