



Dear Stewart Partners,

With the twinkling lights of winter upon us, we here at Stewart wish all of you a happy and healthy holiday season. This week's Midweek Update will be the final installment of 2024. In it, we provide a primer on Maine's somewhat peculiar subdivision statute and share an exciting announcement about our leadership. We also take this opportunity to remind our New Hampshire agents that the NH New & Revised 2024 Title Standards will become effective December 31, 2024. We have highlighted the new standards below along with some notable revisions to other standards.



**Maine's Subdivision Statute: Strict, highly technical, and yet oddly ambiguous** By: Zachary I. Greenfield, Esq., Maine State Counsel

Maine law contains very strict and technical rules for the division of land. Those rules are found in what Maine real estate practitioners refer to as the "subdivision statute," 30-A M.R.S. § 4401, et. seq. The basic principle established by the statute is that, subject to certain narrowly defined and, as described below, problematic exceptions, prior municipal review and approval is required for any "subdivision." The statute defines "subdivision" as "the division of a tract or parcel of land into 3 or more lots within any 5-year period . . . whether the division is accomplished by sale, lease, development, buildings or otherwise." As such, unless an exception applies, the creation of three or more lots in any five-year period requires municipal review and approval.

The statute establishes minimum review standards that every municipality must apply. Municipalities may, however, enact ordinances requiring additional – i.e. stricter – review criteria. Most of Maine's largest towns and cities have done just that. Even if a municipality has not enacted its own stricter review standards, satisfying the statutory minimum standards is still an expensive undertaking for real estate developers given that they are typically required to hire surveyors and civil engineers as part of the review process and build roads and other infrastructure to town standards as conditions of approval. For this reason, many developers seek to avoid municipal subdivision review by taking advantage of the statute's exceptions, the most common of which are as follows:

1. A lot retained by its owner as the owner's principal residence for at least five years prior to division of that lot does not count as a "subdivision" lot;

2. If the municipality has adopted an exception for lots that are 40 acres or more, a lot that is 40 acres or more does not count as a “subdivision” lot;
3. A lot created by testamentary devise does not count as a “subdivision” lot unless the decedent’s intent was “to avoid the objectives” of the statute;
4. A lot created by gift from a grantor who owned for at least five years to certain relatives who then hold the lot for at least five years does not count as a “subdivision” lot unless the grantor’s intent was “to avoid the objectives” of the statute;
5. A lot created by transfer to an abutter if the abutter then holds the lot for at least five years is not counted as a “subdivision” lot unless the grantor’s intent was “to avoid the objectives” of the statute; and
6. A lot encumbered by certain conservation easements.

The fact that most of these exceptions aren’t available if the divider’s intent is “to avoid the objectives” of the statute is highly problematic. Not only does the statute fail to recite its objectives, thereby leaving practitioners to speculate about them, there is very little case law guidance. The primary Maine Supreme Court decision on the subject, *Tinsman v. Town of Falmouth*, 840 A. 2d 100, 2004 ME 2, involved relatively egregious actions by a developer seeking to create multiple lots without municipal approval through conveyances to an entity he created to act as an abutter and to family members. The decision rested far more on the deferential standard of review of a municipality’s factual finding that the developer intended to avoid the objectives of the statute than it did on what specific acts constitute that intent. Accordingly, whenever a practitioner reviews a title wherein the divider claims to have created a lot under an exception to the subdivision statute, heightened scrutiny is required.

An illegal subdivision accomplished after the effective date of the statute, September 23, 1971, can be enjoined by Maine’s Attorney General or by the municipality for at least 20 years from the date of violation, and sometimes indefinitely. An illegal subdivision will likely impact an owner’s ability to use the land as intended and, as stated above, can result in a complete title failure. It is therefore imperative that title examiners and title insurance agents familiarize themselves with the statute. Moreover, Stewart’s underwriters have significant expertise in this area and are always available to help you work through a subdivision issue.



## **Stewart Announces Contract Extension for CEO Fred Eppinger**

On December 3, 2024, our parent company, Stewart Information Services Corporation, announced that it and our Chief Executive Officer, Frederick H. Eppinger, agreed to extend the term of Fred’s contract through the end of 2028.

“In five years as CEO, Fred has guided Stewart by developing our strategy, capabilities and team, much in a down market, resulting in more than doubling our market cap and increasing market share to over 10 percent,” said Thomas G. Apel, Chairman of the Board. “Fred has built momentum, both financially and operationally. The Board is confident that Fred is the right leader for Stewart to continue delivering financial stability and shareholder value.”

“In my first three years at Stewart, my goal was to focus our company’s strengths and fortify our position in the market, and I’m extremely proud of the commitment and dedication of our employees to get behind this singular goal,” said Eppinger. “Now that we are five years into our mission, not only have we fortified Stewart as an industry leader, but we have grown our share of the market. The work is not done and I’m excited about the continued opportunities ahead to innovate, expand and enhance our value proposition for our employees and customers, and to see us execute on our plans to capture 15 percent market share and 11-12 percent pretax margins.”

Eppinger took over as CEO in September of 2019 after having served as a director of Stewart since 2016. Since assuming the CEO position, Eppinger has led the company through a global pandemic and driven sustained growth and momentum through one of the worst housing markets in history. Even when managing through these difficult macro conditions, he has remained relentless in his pursuit of growth, scale, and pretax margin improvement. Eppinger has hired best-in-class leaders, delivered on more than thirty strategic acquisitions, expanded the company’s digital and technological capabilities, built additional capacity into the system, and sought out ways to drive efficiencies through process and data management improvements. All these actions and more have enhanced the company’s market presence and its financial strength, helping to solidify Stewart’s position as a leader in the title insurance space for another 130 years.



**NH New & Revised 2024 Title Standards** By: Michelle Radie-Coffin, Esq., New Hampshire State Counsel

On October 24, 2024, the New Hampshire Bar Association Board of Governors adopted the 16th revision of the NH Title Standards. These standards will become effective on December 31, 2024. With this latest version we have 5 new standards as shown below. In addition, changes and clarifications were made to existing standards. Notably, standards dealing with manufactured housing, 5-33 and 5-35, have undergone major revisions worthy of special attention. The majority of the remaining revisions mainly served to clean up ambiguities to the existing standards and to provide clarity to the conveyancing industry.

1-5. Reference to Documents Recorded in Other Registry. A reference within a document recorded in a New Hampshire County Registry to another document recorded in a different Registry (the "Referenced Document") is sufficient evidence of the Referenced Document within the chain of title, provided that the Referenced Document is not required to be recorded in the Registry where the property is located.

*Comment: For example, a Power of Attorney utilized to execute a Foreclosure Deed may be recorded in a different county and referenced by book, page and county in the Foreclosure Deed.*

6-26. Foreclosure with a Break in Assignment. A foreclosure completed by an assignee who is not the mortgage holder on record due to a missing assignment may record an assignment post foreclosure to correct the break in assignments.

7-26. Transfer on Death Deed. A Transfer on Death Deed (TODD) made on or after July 1, 2024, by a Transferor dying on or after July 1, 2024, is not valid unless it meets the

statutory requirements of RSA 563-D:9. A determination must be made as to whether the transfer is effective upon the death of the transferor without a valid revocation or other inter vivos conveyance prior to death pursuant to RSA 563-D:11. A TODD may be subject to claims against the transferor's Estate and other claims or actions challenging validity. RSA 563-D:16 and 17.

*Comment: NH RSA 563-D is newly adopted, as such, a careful and comprehensive review of the statute is recommended.*

9-45. Repurchase Deed by Municipality. A repurchase deed by a tax collector conveys the property to the former owner(s) in the same tenancy held by the former owner(s) at the time of the tax deed regardless of there being no tenancy recited in the repurchase deed. RSA 80:89, III.

9-46. Junior Federal Non-IRS Liens that Require Judicial Sale and Create a Right of Redemption. Some, but not all, federal junior liens require a judicial sale with proper notice to remove the lien from the property pursuant to 28 U.S.C. 2410(c) and may impose a one year right of redemption after the date of the judicial sale. The judicial sale requirement and right of redemption can be waived or released by the US Attorney for the First District or the federal officer in charge of administering the lien. This applies to both foreclosure proceedings and tax deeds.

<u>US Entity Junior Lien Holder</u>	<u>Judicial Sale Required</u>	<u>One-Year Redemption</u>
FDIC*	No	No
Federal Home Loan Mortgage Corp. (Freddie Mac)	No**	No
Federal National Mortgage Association (Fannie Mae)	No**	No
Dept. of Housing and Urban Development (HUD)	Yes	Maybe**
Federal Housing Authority (FHA)	Yes	No***
Dept. of Veteran Affairs (VA)	Yes	No***
Farmers Home Administration (FMHA)	Yes	Yes
Small Business Administration (SBA)	Yes	Yes
Dept. of Energy (DOE)	Yes	Yes
US Securities and Exchange Commission (SEC)	Yes	Yes
Other US Agencies	Yes	Yes
Judicial Liens held by the US	Yes	Yes

\*\* See FDIC policy statement No. 5359 (1992)

\*\*Fannie Mae/Freddie Mac liens do not constitute a debt obligation of the US. Fannie Mae Charter Act, 12 U.S.C. 1719(b) and Freddie Mac Charter Act, 12 U.S.C. 1455(h)(2)

\*\*\*12 U.S.C. 170K and 38 U.S.C. 3720(d)

*Comment: Reference is made to Show Me State Premium Homes, LLC v. McDonnell, 74 F.4th 911 (8th Cir. 2023), which may be enforced nationally by the Department of Justice. See also Title Standard 9-15 General Federal Tax Lien.*

For questions on the NH Title Standards, please contact your NH underwriting counsel and for a copy of the new standards visit the NH Bar Association website <https://www.nhbar.org/>. For your convenience and review we have included a redlined version of the revised standards [2024 Digest of Changes to the 2019 Title Standards after comment period.pdf](#).



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