



Dear Stewart Partners,

We hope you all had a wonderful Thanksgiving and were able to spend time with family and friends. In this week's update, we are discussing conservatorships and some various new developments in Rhode Island relating to real estate.

Additionally, in case you missed it, Stewart has recently issued a number of Special Alerts for specific persons and properties. As with any person or property identified in a Special Alert, if you are asked to insure a transaction that involves a person or property identified in a Special Alert, you must have approval from Stewart prior to closing and issuing a policy of title insurance. Links for the recently issued Special Alerts are below. Lastly, there is still time to register and listen in to today's webinar hosted by Stewart's Massachusetts underwriting team on notarizations and acknowledgments. To register follow the link below.



Conservatorships in Massachusetts By: Rhonda L. Duddy, Esq.,
Massachusetts and New Hampshire Underwriting Counsel

A conservator is a person who is appointed by the probate and family court to manage the estate of a protected person.

A conservator may be appointed if the person to be protected is unable to manage property and/or business affairs effectively because of a clinically diagnosed impairment in the ability to receive and evaluate information or make or communicate decisions, even with the use of appropriate technological assistance; or because the individual is detained or otherwise unable to return to the United States and the person has property that will be wasted or dissipated unless management is provided; or money is needed for the support, care, and welfare of the person or those entitled to the person's support and that protection is necessary or desirable to obtain or provide money. See M.G.L. c. 190B, §5-401.

Please keep in mind that a guardianship is distinct from a conservatorship and the responsibilities of a guardian and conservator are different. A guardianship involves decisions about personal and healthcare matters, giving the guardian custody of the individual, while a conservator controls the business affairs and has possession of the property of the protected person.

M.G.L. c. 190B, §5-416 states the general duty of a conservator is to act as a fiduciary and to exercise authority only as necessitated by the mental and adaptive limitations of the protected person. A conservator must act in the best interests of the protected person and

avoid conflicts of interest. It is important to note that a conservator has no title to any property owned by the protected person and specifically may not sell, mortgage or grant options in real estate solely because they have been appointed as the conservator.

If the protected person needs funds for their maintenance, a conservator does not have authority to convey or mortgage, and the protected person lacks capacity to convey or mortgage, therefore it is necessary for the conservator to petition the probate and family court to request specific approval to sell any real estate of the protected person.

The procedure for a conservator to sell real estate is similar to that of a personal representative for a deceased individual. Pursuant to M.G.L. c. 202, §22, in order to obtain a license to sell, the conservator must file a petition setting forth the condition of the estate and the facts and circumstances on which the petition is founded.

When filing the petition, a conservator should include the Purchase and Sale Agreement with a specific dollar amount in order to seek a license to sell. There are two petition forms available to sell real estate; one is to sell real estate to pay debts or for maintenance of the protected person, and the other is used to sell real estate of the protected person for investment purposes. Once the petition is filed, the court will generally appoint a Guardian Ad Litem (GAL) for the protected person, to investigate whether the sale is in the protected person's best interest. Service on interested parties is also required. If the court finds that it would be for the benefit of the protected person, the court may grant the petition. If granted, a decree will issue which provides the necessary authority for the Conservator to sell the real estate.

When preparing the deed to convey the real estate of the protected person by the Conservator, the grant comes from the Conservator. This is unlike a deed given under the power of attorney, where the principal is identified as the grantor. Here is an example of a proper grantor clause for a deed from a conservator:

Connie Caretaker, Conservator of the Estate of Protected Person pursuant to a Decree of the _____ County Probate and Family Court dated _____, Docket No. _____, by power conferred by said Decree

The authority of a conservator is limited to the state in which the conservator has been appointed. A nonresident of Massachusetts under a conservatorship in their state of residence may sell real estate in Massachusetts if the foreign conservator files authenticated copies of the foreign appointment with the probate and family court for the county in which the real estate is located and if that conservator obtains a license to sell from the Massachusetts court.

A conservatorship can be terminated if the protected person regains the capacity to manage their financial affairs or upon their death. However, once a conservator has been appointed, the protected person cannot assign or transfer their interest in property.

Stewart's Virtual Underwriter contains a robust section on underwriting transactions involving guardianships and conservatorships. To view that section, follow this link: [Guardianship And Conservatorship Procedures](#)

As always, should you have any questions about a specific transaction you've been asked to insure, please reach out to your local Stewart Underwriting Counsel.



Recent Rhode Island Real Estate Developments By: Eileen C. O'Shaughnessy, Esq., Rhode Island Underwriting Counsel

Underwriting Reminder regarding Waterfront Property - Pending Rhode Island Cases Involving Beach and Shore Rights:

Two recent cases regarding the public's rights to the shore, which challenged the constitutionality of 2023 legislation which extended the rights of the public along Rhode Island's shoreline to ten feet (10') landward of the "recognizable high tide line" ("scum line", "wrack line" or "seaweed line") (previously the "mean high tide line") appear to be headed to the Supreme Court. Until a decision is issued by the Supreme Court, Stewart's water rights exceptions for the ocean and Narragansett Bay will include the extra ten feet of access given to the public by the legislature. When insuring title to property which abuts the ocean or Narragansett Bay, the following exception must be included on Schedule B of the Policy:

1. Rights of the United States Government to change and alter the harbor, bulkhead, or pierhead lines adjacent to the premises; to establish harbor, bulkhead, pierhead lines different from the present lines; and to take land now or formerly under water without compensation.
2. No title will be insured to any land lying below the present or any former high water line plus ten feet of Narragansett Bay.
3. Rights of the United States Government, The State of Rhode Island and the City/Town of ADD CITY OR TOWN or any of their departments or agencies to regulate and control the use of the piers, bulkheads, land under water and land adjacent thereto.
4. Navigational servitudes and all other rights, titles and powers of the United States, the state and local government, and any other governmental entity and the public over lands comprising the beds of oceans, gulfs or bays and their shore lands extending to the ordinary high water line plus ten feet thereof.
5. Lands beyond the line of the border or bulkhead lines, or vegetation line.
6. Filled lands, submerged lands or artificial lands, including any determination that some portion of the land is tide or submerged lands, or has been created by artificial means or has accreted to such portion so created.
7. Riparian or water rights, claims or title to water, whether or not shown by the public records.

The lower courts' decisions in both cases can be found here:

[David M. Roth, Linda H. Roth and ES710 LLC v. State of Rhode Island and The Rhode Island Coastal Resources Management Council \(RI Superior Court, C.A. No. WC-2023-0440\);](#) and

[Stilts, LLC v. State of Rhode Island and Rhode Island Coastal Resources Management Council; \(RI Superior Court, CA No. WC-2023-0481\).](#)

Bail Recognizance Liens:

Under R.I.G.L. § 12-13-22(b), the lien created in favor of the State of Rhode Island by the recording of a bail recognizance notice continues until the attorney general (for matters for which sureties are given in Supreme Court or Superior Court), or the clerk of the Family Court or District Court (for matters for which sureties are given in those courts) executes a release of the lien. There is no time frame established for the release to be executed or recorded.

The RI Bar Association Committee on Real Estate Title Standards and Practices has taken the first step in establishing a new title standard that the lien will be deemed discharged after 10 years on record. The committee has voted to approve the standard which must then be published in the bar journal before becoming a standard. Once adopted as a title standard, it will no longer be necessary to obtain releases for liens which have been on record for more than 10 years.

If you encounter a Bail Recognizance Lien, prior to the adoption of the anticipated title standard, please contact Eileen O'Shaughnessy for guidance at eileen.oshaughnessy@stewart.com.

Publication of Foreclosure Notices and Closing of Providence Journal's Local printing facility:

The Providence Journal had announced that it is closing its Rhode Island printing facility and moving its printing operations to Auburn, Massachusetts. Under RIGL § 34-11-22, Statutory power of sale in mortgage, foreclosure sales of properties in certain cities and towns must be published in the Providence Journal as the Newspaper published daily in that city or town. Until the statute is amended, foreclosure sales advertised in the Providence Journal, pursuant to RIGL § 34-11-22, will be considered insurable if published in that paper, although the printing operations of the Providence Journal have been relocated outside of Rhode Island.



Recently Issued Special Alerts Bulletins:

Rhode Island: Special Alert SA2024366

Please contact Stewart if you are asked to issue policies involving the following person or property:

Edward Franco

758 Cranston Street, Providence

To view the bulletin, follow this link:

<https://www.virtualunderwriter.com/en/bulletins/2024-11/sa2024366.html>

Massachusetts: Special Alert SA2024360

Please contact Stewart if you are asked to issue policies involving the following person or property:

Mark Dames

Laura Dames

99 West Rd, Orleans, MA 02653 (Barnstable County)

To view the bulletin, follow this link:

<https://www.virtualunderwriter.com/en/bulletins/2024-11/sa2024360.html>

All States: Special Alert SA2024371

Please contact Stewart if you are asked to issue policies involving the following persons:

Botha Fredrick

Fredrick Botha

Botha Fredrick

Botha Frederick

To view the bulletin, follow this link:

<https://www.virtualunderwriter.com/en/bulletins/2024-11/sa2024371.html>



**Massachusetts Underwriters Talk Title Series – Next installment:
Wednesday, December 4th**

Join us for a discussion on Notarizations in Massachusetts, which will include the importance of proper acknowledgements, what to do when a signer cannot sign and other special situations.

The webinar will take place **TODAY** at 11:00 a.m.

If you'd like to register, follow this link: [MA Underwriters Talk Title Registration Link](#)



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