

Dear Stewart Partners,

With the summer real estate market just around the corner, in this week's Midweek Update you'll find a summary of a recent study about title insurance claims. If you've ever been asked why a consumer should buy title insurance, this study highlights some of the most important reasons why title insurance is so valuable to a homeowner. In addition, this week's Midweek Update includes information about equitable mortgages that may sometimes impact titles in Massachusetts.

On the industry front, the New England Land Title Association has announced their annual convention will take place this year in Portland, Maine in September. Read below for more details and a link to register. Lastly, but definitely not least, we're proud to share that Eileen O'Shaughnessy, our Rhode Island Underwriting Counsel, is being recognized by the Rhode Island Bar Association for her pro bono work and is one of the 2024 Annual Bar Association Award Winners.



Recent Study Highlights Growing Significance of Fraud and Forgery Claims by: Zachary Greenfield, Esq., Maine State Manager and Underwriting Counsel

According to a recent study by consulting and actuarial group Milliman for the American Land Title Association, from 2013 to 2022, title insurance underwriters handled more than 200,000 claims and incurred approximately \$4.4 billion dollars in claims losses and related expenses, 21% of which resulted from fraud and forgery claims. While the average claim cost for matters not involving fraud or forgery was \$26,328, the average cost of each fraud or forgery claim was approximately \$143,000.

The study grouped claims into 11 categories. The top four categories were as follows:

| <u>Category</u> | <u>Description</u> | <u>Percent of all claims</u> |
|-------------------------------|--|-------------------------------------|
| Basic Risk | fraud, forgery, undisclosed heirs, marital rights, competency, etc. | 24% |
| Special Risks | mechanics' liens, subordination of prior risks, underwritten risks, etc. | 21% |
| Escrow and Closing Procedures | improper instructions, improper payments, failure to make a payment, failure to complete post-closing duties, etc. | 13.70% |
| Examination and Opinion | irregular omissions, unforeseen risks, etc. | 11.90% |

irregularities

The remaining categories included “apparent non-covered claims” (8%); “endorsement, title plan, search and abstract claims” (7.8%); “taxes and special assessment claims” (7%); “survey-inspection/description matters” (5.2%); “typing or policy review” (0.9%); “stakeholder and interpleader cases” (0.3%); and “disputed procedure” (0.2%), including matters such as foreclosures and government forfeitures.

Notably, the study found that in addition to being the most expensive type of claim, the frequency of fraud and forgery claims is on the rise. Whereas those claims represented 19% of all basic claims from 2013 to 2020, that figure rose to a staggering 44% in 2022. It is therefore now more important than ever to be on the lookout for potential title fraud. Your Stewart underwriters are always available to review any situations that you think might involve fraud or forgery. In this context, we urge you to follow the old adage, “if you see something, say something.” To view the full study, follow this link: [Recent Study - Fraud & Forgery Link](#)



Equitable Mortgages in Massachusetts—What are they and how to “release” them from record title by: Mark A. Jones, Assoc.
Senior Underwriting Counsel, Massachusetts and Rhode Island

Whenever reviewing title examinations, when we see a traditional recorded mortgage, we all know the process of getting the mortgage released of record. The payoff is ordered, funds are collected at closing, the funds are mailed or wired to the lender, and the lender then sends the release (hopefully) to the Registry of Deeds for recording. In contrast, an equitable mortgage is not “recorded” at the Registry of Deeds. An equitable mortgage is an inchoate lien, similar to an estate tax lien, that needs to be identified by a title examiner or attorney looking at the registry and probate records. An equitable mortgage typically arises when a divorce agreement and/or a judgment divides the marital assets, leaving one spouse the owner of real estate, but obligates the other spouse to pay a certain sum of money as part of the asset division. As the name suggests, the equitable mortgage is an equitable concept whereby if one party doesn’t satisfy their obligations, the other party’s assets are encumbered by the unsatisfied obligations. The following are some typical examples of situations where an equitable mortgage might arise and what would be required to insure.

Fact pattern 1: Divorce Agreement states Husband shall convey property to Wife and the agreement provides no payment of any funds by wife to the Husband.

Curative action: None. No equitable mortgage has been created as Wife has no financial obligation to the Husband. A conveyance by the Husband to the Wife will release his interest.

Fact pattern 2: Divorce Agreement states Husband and Wife shall list the property for sale and split the proceeds with the Wife getting 60% of the proceeds and Husband gets 40% of the proceeds. Both signed a deed for consideration to a third party buyer who is now selling.

Curative action: None. Both parties to the divorce have signed a deed for consideration and there is no need to go behind the transaction to determine if the parties received the pro rata share.

Fact pattern 3: Divorce Agreement states Wife shall convey the property to the Husband and Husband shall pay Wife \$50,000. Wife conveys property to Husband for \$1.00. No evidence of payment is filed in the probate or the Registry of Deeds. Five years later Husband goes to sell the property.

Curative action: As the record title fails to disclose evidence that the Husband's financial obligation to pay the Wife the \$50,000, the Wife may have an equitable mortgage encumbering the title. In order to insure we would require record title evidence of payment or a release from the Wife. Record title evidence can be satisfied by filing evidence of satisfaction of payment with the probate court in the divorce proceeding or by recording satisfactory documents with the Registry of Deeds.

Fact pattern 4: Divorce Agreement states Wife shall convey the property to the Husband and Husband shall pay Wife \$50,000. Wife conveys property to Husband for \$1.00. No evidence of payment is filed in the probate or the Registry of Deeds. Thirty-Five years later Husband goes to sell.

Curative action: Likely none, but check with an underwriter. Barring any extraordinary circumstances, we would generally not require evidence of payment or release from the wife. Although the traditional mortgage expiration statute ([Mass Legislature Chapter 260, Section 33](#)) of 35 years doesn't specifically apply to an equitable mortgage, as there is no actual recorded mortgage, enough time has passed since the divorce that we would likely be comfortable insuring the property in this situation.

The above fact patterns are examples of common situations we see with divorce agreements. When reviewing a title with a divorce in the chain always be aware of any potential equitable mortgages that may arise. To add to the confusion, we often see situations where the agreement and/or judgment outlines the division of the property and then the parties do something completely different. Be aware that many divorce situations require a case by case analysis. As always please contact an underwriter if you need assistance analyzing a particular fact pattern.



New England Land Title Association Annual Convention

The New England Land Title Association ("NELTA") announced that its 2024 annual convention will take place in Portland, Maine, from September 15 through September 17 at the Westin Portland Harborview Hotel. Additional details and hotel booking information may be found at the following link: [NELTA Annual Convention](#). We hope to see you there.



Eileen O'Shaughnessy, Esq. recognized by the Rhode Island Bar Association

The Rhode Island Bar Association has recently announced its 2024 Annual Bar Association Award Winners, and our Rhode Island State Underwriting Counsel, Eileen O'Shaughnessy is being awarded the Pro Bono Publico Award. We are so proud of Eileen and her dedication to pro bono service. There will be an award reception immediately following the last seminar at the Annual Meeting on June 13, 2024 at 4:30 in the Rotunda of the Convention Center. The reception is free and open to all bar members.



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