



New England Regional Midweek Update

9/25/2024

Dear Stewart Partners,

Fall is in the air. This season evokes the senses for warm apple crisp and cozy fall sweaters. Our region offers the best of the autumn season and to that end, we are sharing information found on NewEngland.com highlighting the 15 best apple orchards in New England. [15 Best Apple Orchards in New England](#)

On the legal/business side, we would like to call your attention to a trap for the unwary as it relates to homestead issues with revocable trusts in New Hampshire. And, as we are on the topic of trusts, Tracie Kester will be part of an expert panel speaking on Massachusetts trust issues and what the Massachusetts real estate practitioner should know. This program is being offered through Massachusetts Continuing Legal Education ("MCLE"). More details can be found below.

In addition, we have included a link to a useful handout created by the American Land Title Association (ALTA) and the National Notary Association with tips for checking state identification cards during in-person notarization. Lastly, and in case you missed it, a Special Alert was issued for property in Massachusetts. For further details see below.



**Primer on Homestead Rights in NH when dealing with Revocable Trusts** By: Michelle Radie-Coffin, New Hampshire State Manager and Associate Senior Underwriting Counsel

Homestead rights in New Hampshire must be addressed in every deed and in every mortgage. The homestead right applies to a primary residence and benefits the titled owner

and any non-titled spouse, automatically. The value of the homestead right is presently \$120,000. NH RSA 480:1. Homestead rights have priority over mortgages and liens, with the exception of purchase money mortgages and property tax liens. The failure to properly release these rights is a significant source of claims especially in the bankruptcy and foreclosure context. These claims can result in significant financial losses. Therefore, it is extremely important to make sure you properly address them in each transaction. Dealing with a transaction involving a revocable trust (which account for the majority of trusts we see in title) can be particularly tricky, and it is critical to assess whether homestead rights exist and how to address them. The relevant statute provides as follows:

NH RSA 480:9 Homestead Rights. – A conveyance of real property by deed to one or more trustees of a revocable trust shall not result in the loss of homestead rights of any person executing the deed (unless the deed contains an express release of homestead rights by such person) provided that such retained homestead rights in any such property shall not be enforceable against any other person to the extent such other person acquired an interest in or lien on the property after its conveyance into the trust without having notice of the revocability of the trust. Such notice may be given by the inclusion of the word "revocable" in the name of the trust as recited in the deed, or by the recitation in the deed or a subsequently recorded document that at the time of the conveyance the trust was a revocable trust.

In addition to the statute, New Hampshire has a title standard on point which provides further clarification:

NH Title Standard 5-5 Homestead Release and Revocable Trusts. Effective January 1, 1998, a deed to one or more trustees of a named revocable trust or a trust that provides notice that its terms are revocable does not release homestead rights of the grantors, unless the deed contains an express release of homestead rights by the grantors and their spouses. A subsequent deed or mortgage from one or more trustees of a revocable trust should also be executed by the grantors/settlors and their spouses releasing their individual homestead rights. See RSA 480:9.

The takeaway from a title perspective is if you have a deed coming out of a revocable trust, you must review the deed into the trust to see if the homestead right was expressly released. If it was not, or if there is no mention of homestead, then the homestead right has been retained by the settlors of the trust and must be released in the deed coming out of the trust. To effectuate this, the trustee(s) must sign in their capacity as trustee(s) and, in addition, must sign individually for the purpose of releasing homestead. The deed must

also contain a recitation(s) as to the marital status of the trustee(s). If the trustee(s) is married, then their spouse must also sign the deed for purposes of releasing homestead.

As always, if you have any questions on this subject or any other conveyancing matter, do not hesitate to reach out to your Stewart underwriter.



**Tracie Kester, Esq. to present at MCLE Webinar on October 8, 2024**

Tracie Kester, Massachusetts Underwriting Counsel at Stewart, will be participating in a webinar entitled “**Critical Traps for Unwary Real Estate Practitioners in Using Trust-Related Documents**” for Massachusetts Continuing Legal Education (MCLE) on October 8, 2024. In addition to Attorney Kester, Attorney Kristin Dzialo from Rubin and Rudman and Attorney Carrie Rainen of Rainen Law Office will speak about the different types of trusts, how to prepare trustees’ certificates, estate tax issues with trusts, title insurance implications, and traps for the unwary. The live webcast will be at noon on Tuesday, October 8, and will be rebroadcast on October 30 and November 7. For more information or to register, go to the MCLE website: [MCLE Webinar Registration](#)



**Tips for checking state ID cards during an in-person notarization**

By now we are all aware of seller impersonation fraud. It is a rising trend that costs title insurers and homeowners billions of dollars in losses every year. The handout in the link below includes tips to help verify and check state ID cards. Please take some time to review this handout.

[Tips-for-Checking-State-Identification-Cards \(alta.org\)](#)



## **In Case You Missed It – Special Alert SA2024290**

On Monday, Stewart issued a Special Alert for property located at 16 Screenhouse Lane, Plymouth, Massachusetts. If you are asked to insure a transaction involving this property, its owner, or Samuel Piette, please contact your Stewart underwriting counsel for approval. To view the Special Alert, follow this link: [Special Alert: SA2024290](#)



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