

Dear Stewart Partners,

In this week's update, we are providing you with some Stewart resources we hope you find useful, including information about solar equipment financing statements and a recent case regarding public rights to the Rhode Island shoreline.

As a reminder, please see the information at the end of this update about the upcoming New England Land Title Association annual convention. Additionally, the Massachusetts Underwriters Talk Title September webinar is scheduled for Wednesday, September 18th at 11 AM. See below for details and registration information.



**Solar Equipment Financing Statements** By: Katherine F. Fletcher, Esq., Associate Senior Underwriting Counsel - Connecticut

The consumption and popularity of solar energy is becoming more prevalent as homeowners increasingly adopt renewable energy sources, such as roof solar energy systems. Typically, homeowners either lease or own roof solar panels and related equipment. If a homeowner does not own the solar equipment outright, the homeowner has likely financed the purchase of the solar equipment through a loan from the solar company. If solar equipment is leased from the solar company, the solar company owns the solar equipment and is paid back by the homeowner in lease payments or other fixed or variable payments, or a combination thereof. In either financing situation, there is usually evidence of the financing on the land records in the form of a UCC-1 financing statement ("UCC-1"). In cases of preexisting solar equipment financing or leases, when a homeowner attempts to sell or refinance the property, a title search will disclose any recorded UCC-1s related to the solar equipment. Often, lenders will consider the UCC-1 as having a superior lien to the new mortgage and refuse to move forward unless the existing lien is terminated or subordinated, or otherwise omitted as an exception from the loan policy, as discussed below.

When a homeowner is refinancing or obtaining a new loan for property that includes existing financed or leased solar equipment, the collateral description of any recorded UCC-1 related to solar equipment needs to be reviewed carefully. Sometimes, UCC-1s for solar equipment state they only attach to the solar equipment, and not the underlying real estate. In these situations, provided there is express language in the collateral description stating the UCC-1 is not a lien on real estate or is considered only a personal property lien, the UCC-1 can be omitted from Schedule B, Part 1 of the loan policy.

In situations where the solar equipment UCC-1 is not expressly limited as a lien on only personal property (and therefore could be considered as a lien on real estate), or if it is unclear as to what the UCC-1 lien encumbers, the UCC-1 will need to remain on Schedule B, Part 1 of the loan policy, unless terminated or subordinated to the new mortgage by the solar company. When the UCC-1 is subordinated to the new mortgage, the lender and the solar company will need to enter into a subordination agreement. If the solar company is using its own form of subordination agreement, the form needs to be carefully reviewed as often solar company forms lack sufficient operative subordination language. Further, in some instances the solar company's form contains language that states the solar equipment remains unaffected by the mortgage (even though the agreement states the mortgage constitutes a lien prior to and senior to the solar company's financing statement), and/or in the event of a foreclosure of the new lender's mortgage, the effect of the UCC-1 filed by the solar company remains undisturbed. Your careful review of the language in such subordination agreements, particularly those that mention conditions, exceptions or agreements with the new lender, is required.

With respect to issuing an owner's policy for property with existing solar equipment, similar to a loan policy, a previously filed solar equipment UCC-1 can be omitted as an exception from Schedule B so long as the UCC-1's collateral description contains express language that the UCC-1 is not a lien on real estate or is considered only personal property. However, we advise keeping the UCC-1 on Schedule B in any event so the homeowner is aware of the solar equipment lease or financing.

Please note this discussion is only intended to address specific situations involving recorded solar equipment UCC-1s and whether to identify them as exceptions on loan and owner's policies. Whether solar equipment is considered personal property or a fixture for other purposes (such as to determine the value of the underlying property) may vary from state to state, and lender to lender.

Of course, when reviewing solar equipment UCC-1s or any related agreement, always feel free to consult with a Stewart underwriter if you have any questions. Further, if you would like to learn more about UCC's generally, Stewart's Virtual Underwriter has a section dedicated to the Uniform Commercial Code, which provides a great primer on the UCC, priority, and duration that UCC filings are valid. This chapter in VU can be viewed by following this link: [Underwriting Manual: Uniform Commercial Code](#)



**Rhode Island Public Rights to the Shore** By: Eileen C. O'Shaughnessy, Esq., Rhode Island State Underwriting Counsel

In David M. Roth, Linda H. Roth and ES710 LLC v. State of Rhode Island and The Rhode Island Coastal Resources Management Council (C.A. No. WC-2023-0440) a Rhode Island Superior Court Judge recently issued a decision on the constitutionality of R.I.G.L. §46-23-26 (The public's rights and privileges of the shore), a law enacted in 2023 that extends the public rights to the shoreline 10 feet landward of the "recognizable high tide line".

The Court stated, "The Act resets where 'the land held in trust by the state for the enjoyment of all of its people ends and private property belonging to the littoral owners begins.'" *State v. Ibbison*, 448 A.2d 728, 729 (R.I. 1982). Until the passage of The Act, "the

mean-high-tide line [MHT] [w]as the landward boundary of the shore for the purposes of the privileges guaranteed to the people of this state by our constitution.” *Id. at 732.*”.

Where, under the State Constitution and Court interpretations thereof, “The shoreline” was determined to be the arithmetic average of high-water heights observed over an 18.6-year cycle, the new act defines the public’s rights as being 10 feet landward from the *recognizable high tide line*, which can be seen as the line with seaweed or other debris, or where the wet sand meets the dry sand.

Plaintiffs, owners of beachfront properties in Westerly, RI, argued that “the Act is a *per se* physical taking under both state and federal constitutions.” Plaintiffs reasoned that the Act “grants a public right of access, occupation, and use across the Roths’ private property” and “appropriates a right of access to physically invade the Roths’ private property, without compensation”. The Court agreed, finding that “by expanding the preexisting boundary line to ten feet landward of the recognizable high tide line, The Act confiscated the Plaintiffs’ property resulting in an unconstitutional taking”. To read the lower court’s decision, follow this link: <https://www.courts.ri.gov/Decisions/Superior-WC-2023-0440.pdf>

The decision has been appealed to the State’s highest court by the Rhode Island Attorney General. We’ll be monitoring the case and will highlight the decision, once issued, in a future Midweek Update.

From a title underwriting perspective the lower court decision has not changed the requirement that when insuring title to property in Rhode Island that abuts tidal water, the commitment and policy must contain the following exceptions:

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 INSERT NAME OF BODY OF WATER.
3. Rights of the United States Government, The State of Rhode Island and Providence Plantations 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.



## **Reminder to Register for NELTA's Annual Convention**

New England Land Title Association (NELTA) is holding its annual convention September 15 - 17, 2024 at the Westin Portland Harborview Hotel in Portland, Maine. Attendees will be able to earn CLE credits, network with industry peers, participate in a roundtable discussion focused on commercial real estate transactions, and learn about various topics including new legislation affecting the title industry. The link to register is as follows: [NELTA's Annual Convention Registration](#)



## **Webinar: Massachusetts Underwriters Talk Title – September Installment**

Join Tracie Kester, Esq., Associate Senior Underwriting Counsel for Massachusetts for our September webinar called “What Does That Mean??”

The webinar will take place on September 18th at 11AM. The webinar will focus on some common and not so common terms and phrases encountered in recorded documents. Tracie will highlight the impact and meaning of the terms and what you need to know when you encounter them.

To Register, follow this link: [Stewart's Underwriters Talk Title for Massachusetts Agents](#)



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