New England Regional Midweek Update
2/26/2025

Dear Stewart Partners,

As you skate through icy New England, we are offering some information regarding insuring appurtenant easements as well as a follow-up to last month's tutorial on addressing undischarged mortgages in Connecticut. Also, we are providing an update on the FinCEN BOI reporting drama – the filing requirement is back! Lastly, in case you missed the recently issued Special Alerts, links are below.

Insuring Appurtenant Easements By: Katherine F. Fletcher, Esq., Connecticut State Counsel and Associate Senior Underwriting Counsel

Generally, an easement provides someone with the legal right to use someone else's property for a specific purpose. When reviewing a title commitment, we often see easements that either encumber or burden the subject property, or benefit (are appurtenant to) the subject property. Property that is burdened by an easement is the servient estate and the property that has the benefit of an easement is the dominant estate. Easements that encumber or burden property show up as exceptions on the commitment and policy for that property. Easements that benefit property are considered appurtenant easements and are often included in the legal description of the property as a "together with" item. In other words, the property is conveyed together with an easement, which is an appurtenant right.

By way of example, a reciprocal easement agreement ("REA") is a type of easement that burdens and benefits property by providing for the rights, restrictions and obligations of multiple property owners. A shopping center developer and a major retailer who purchases a portion of the shopping center will typically enter an REA which governs the interrelated rights and obligations of the parties and includes easements and restrictive uses in connection with utility services, maintenance, access, parking and other related items. As with any recorded document that contains covenants, restrictions and/or easements, the REA will be shown on the commitment and policies for the servient property as an exception.

An REA might contain easements in favor of Property A which permit the owner of Property A and its customers, employees and agents to cross over common areas located on Property B for parking or to reach a public road for ingress and egress into the shopping center, where both pieces of property are located. In this case, the parking and access easements created by the REA would be "together with" items on the Schedule A legal description of the commitment and policies issued in favor of the Property A owner and/or its lenders. However, it is important to note that the insurance of all the rights and interests

under an REA or similar document is not appropriate because many of the rights, powers, privileges, licenses, options, etc. contained in the agreement are not within the scope of title insurance policies. With this in mind, in order to insure an appurtenant easement, several conditions need to be satisfied, including the following:

- The easements and rights created or established by an easement must be for a specific purpose (driveway, ingress and egress, party wall, utilities, etc.). If an easement does not state its purpose, it should not be insured.
- On the Schedule A legal description, the easement must be referred to as a "nonexclusive" easement, unless exclusivity is specifically stated in the agreement with respect to such easement.
- If all parties holding mortgages or other liens against the servient parcel have not joined in the execution of the instrument that created the easement, such parties must also sign the instrument or provide unqualified subordinations to be recorded.
- The easement must have been created by a written instrument which is properly executed by all the owners of the servient estate at the time of execution.
- The instrument creating the easement must be properly acknowledged and any specific additional requirements for recordation of instruments (such as witnesses in Connecticut) also must be satisfied.
- Generally, two different chains of title need to be examined: one pertaining to the dominant estate; another pertaining to the servient estate. In some cases, it may be necessary to show two sets of exceptions: one in relation to the dominant estate; another in relation to the servient estate. For example, all the defects, liens and encumbrances affecting the servient estate and not satisfied, released or subordinated at the time of the creation of the easement must be shown as exceptions affecting the servient estate
- If the easement is reciprocal (such as an REA), that is, if the dominant estate is also a servient estate, a proper exception must be made in Schedule B of the policy to the terms of the easement.

The following is sample "together with" language for a validly created appurtenant easement that can be added to a Schedule A legal description:

> "Together with the benefit, and subject to the terms of, the easement for parking and access purposes set forth in that certain Reciprocal Access Agreement by and between _____ and _____, recorded in Volume ____ at Page ____ of the _____ Land Records."

The summary set forth above only applies to insuring appurtenant easements. Please contact a Stewart Underwriter if you are asked to insure licenses or easements in gross. Also, for a complete list of items to consider when insuring an appurtenant easement, please contact a Stewart Underwriter and visit Stewart's Underwriting Manual for easements which can be accessed here: Underwriting Manual: Easements And Easement Insurance.

More Help with CT Release Issues: Connecticut Standard of Title 18.7 By: David Veleber, Connecticut Underwriting Counsel

There are many statutory remedies that can be useful tools for clearing unreleased mortgages in the State of Connecticut. Over the past couple of months, there have been Midweek Updates covering the use of Connecticut General Statutes Sections 49-13a, 49-8, and 49-8a to release mortgages clouding title in Connecticut. This article focuses on another potential method to provide marketable title. Standard of Title 18.7 can be used to establish marketability in certain circumstances where no release is available.

Lawyers, paralegals, and legal assistants may do all that is humanly possible to collect information regarding an old mortgage and still be unable to obtain a release or the documents needed to utilize Conn. Gen. Stat. § 49-8a (as discussed in the February 12, 2025 Midweek). The risk that the mortgagee will seek to foreclose the mortgage is low or nonexistent in many cases because retrievable office files or documents may establish payment. The mortgage may also be just sitting on the land records years after the passing of the stated maturity date (but maybe not long enough to utilize C.G.S. Section 49-13a). The greater risk is that unless the mortgage is formally released, invalidated by operation of law (under § 49-13a), or discharged by a judgment of the Superior Court (under § 49-13), it will impair the property's marketability. Thankfully, Standard of Title 18.7 addresses the marketability issue in certain situations.

Although the standard is not based on a statute, it provides a useful and acceptable practice in Connecticut for dealing with certain unreleased mortgages. Connecticut Standard of Title 18.7, Sections A, B and C, can help provide marketable title through the recording of statutory affidavits. This standard describes three circumstances under which an unreleased mortgage will not affect the marketability of the title to the land described in that mortgage. The three situations in which Standard 18.7 may establish marketability of title, notwithstanding the existence of an unreleased or undischarged mortgage, all require the recording of an affidavit by either the mortgagor or the current owner of the encumbered property. This affidavit must meet the requirements of Conn. Gen. Stat. § 47-12a as to form and content.

Affidavits filed pursuant to one of these three sections do not release a mortgage but can make title marketable as to the unreleased mortgage. Each section has its own requirements and criteria for when it can be used and what statements and information must be provided in the affidavit. The Section A and B formats require an affidavit by a mortgagor (or a fiduciary in the case of Section A) attesting to attempts to find the last mortgage holder of record without success. The mortgages must be of record at least 5 years for Section A to apply or 10 years for Section B to apply. While Section A and B affidavits are signed by the mortgagor, a Section C affidavit is signed by the current title holder (someone other than the mortgagor) and the mortgage must be of record for more than 20 years. Except under Section A, the Standard requires an individual to sign such affidavits, not a fiduciary or attorney in fact, so, if the mortgagor or owner of record is deceased, this Standard may be inapplicable.

A Standard 18.7 affidavit is effective only in those cases where the affiant has been unable, after diligent efforts, to establish the existence and whereabouts of the record mortgage holder. Generally, the Standard is contemplating the mortgagee being an individual or a non-institutional lender. The Standard will not apply in those cases where the mortgage holder is known to exist and it, or its successor in interest, can be located to obtain a

release. You will not be able to use the affidavit for most mortgages that run to a mortgage company or bank unless there is no successor institution.

To summarize when each section can be used:

For an affidavit under Section A, the unreleased mortgage must have been recorded at least five years ago, and the mortgagor (or fiduciary of the mortgagor) is making the affidavit. There must be documentation establishing payment of the mortgage debt, such as a paid note, which should be attached to the affidavit.

For an affidavit under Section B, the unreleased mortgage must have been recorded at least ten years ago, and the mortgagor must still be the owner or one of the owners of the mortgaged property. This affidavit is intended to address the situation where the party signing the affidavit does not have documentary evidence showing satisfaction of the mortgage debt but has personal knowledge of the payment.

For an affidavit under Section C, the owner of the property is not one of the mortgagors named in the unreleased mortgage, nor is there any documentation to show the satisfaction of the underlying mortgage loan. Nevertheless, a party can still establish marketability through the recording of an affidavit when the unreleased mortgage has been recorded for at least twenty years prior to the making of the affidavit. Additionally, the maturity date of the mortgage in question must have passed more than six years ago.

Remember, Standard of Title 18.7 does not release or discharge mortgages. The Standard does, however, provide a means of establishing marketability of title in situations where a mortgage is unreleased of record and circumstances indicate that the mortgage presents no real or substantial probability of litigation or loss. The recording of an appropriate Section 47-12a affidavit provides permanent evidence regarding these facts.

As always, please contact your local underwriter to discuss a specific transaction or any questions regarding the preparation of any of these affidavits.

New March 2025 Filing Deadline for FinCEN BOI Reporting: On again, Off again, ON AGAIN!

According to a February 19, 2025 notice from the Financial Crimes Enforcement Network (FinCEN), the agency enforcing the Corporate Transparency Act (CTA), the new deadline to file a beneficial ownership information report for many small businesses is March 21, 2025. However, that deadline is subject to change. FinCEN noted that it will provide an update before March 21, 2025 of any further modification to the deadline. This guidance is the result of the U.S. District Court for the Eastern District of Texas decision issued on February 18, 2025 in Smith, et al. v. U.S. Department of the Treasury, et al., which lifted the stay the Court had ordered on January 7, 2025, that prevented FinCEN from enforcing the BOI reporting requirements on a nationwide basis. The effect of the February 18, 2025 decision means that CTA reporting obligations have been reinstated, pending appeal and subject to the FinCEN 30-day deadline extension from the date of FinCEN's February 19, 2025 announcement. We will certainly continue to update you on any future deadline or filing

requirement changes. To read a complete copy of FinCEN's notice, click here: February 18, 2025 FinCEN Notice.

Complimentary ALTA Insights Webinar – Fincen's BOI Reporting Rule

In case you missed it or need a refresher as to exactly what the Beneficial Ownership Information reporting requirement is and who needs to report now that the stay has been lifted, ALTA has available a recorded webinar which originally aired in February of last year, but which is available for viewing. To access, follow this link: The Corporate Transparency Act: Does Your Company Need to File a BOI Report? - YouTube

You can access other previously aired ALTA Insights webinars, through ALTA's website here: ALTA - Webinars (ALTA Insights)

In Case you Missed it: Recently Issued Stewart Special Alert Bulletins

Special Alert – 295 Kemp Street, Dunstable, MA 01827

On February 25, 2025, Stewart issued Special Alert SA2025061 concerning property located at 295 Kemp Street in Dunstable, Massachusetts. The Alert also covers Kevin R. Tully and Katherine E. Tully. You can read the full alert on Stewart's Virtual Underwriter website here: Special Alert: SA2025061

Special Alert – 174 Crystal Lake Road, Osterville, MA 02655

On February 24, 2025, Stewart issued Special Alert SA2025058 concerning property at 174 Crystal Lake Road in Osterville, Massachusetts. The Alert also covers David C. Feeley. You can read the full alert here: Special Alert: SA2025058

Special Alert – Minerva Hollingsworth

Also on February 24, 2025, Stewart issued a Special Alert cautioning all offices to be alert to potentially fraudulent documents notarized in Texas using the notary name Minerva Hollingsworth. You can read the alert here: Special Alert: SA2025060

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