

Dear Stewart Partners,

We hope you are keeping warm this chilly week. In our Mid-Week Update, we are providing a discussion regarding methods of dealing with undischarged mortgages in Connecticut. We also have a review of party walls and their associated underwriting requirements. Lastly, we are providing links to our 2025 series of half-hour webinars from the Massachusetts underwriting team. We hope this information proves useful and, as always, we are happy to answer any questions you may have on these topics.



**Older, Unreleased Mortgage? How Conn. Gen. Stat. § 49-13a May Be Able To Help** By: David Veleber, Esq., CT Underwriting Counsel

Unreleased and improperly released mortgages continue to be a regular source of inquiries from agents. Often, the title search comes back and it reveals a mortgage that should have been released but was not. Over the years there have been many statutory remedies added to help clear up these unreleased or improperly released mortgages using affidavits. Some of these statutes include C.G.S. Section 49-9a, 49-8a, 49-8 and 49-13a (plus Connecticut Standard of Title 18.7). This article focuses on the use of C.G.S. Section 49-13a to release older mortgages that are either twenty years beyond their maturity date or forty years beyond their recording date, depending on the facts.

C.G.S. Section 49-13a is entitled “Undischarged mortgage invalid as further lien. Time periods. Tolling of time period by recording notice.” Under Section (a), “When record title to real property remains encumbered by any undischarged mortgage, and the mortgagor or those owning the mortgagor’s interest therein have been in undisturbed possession of the property for at least twenty years after the expiration of the time limited in the mortgage for the full performance of the conditions thereof, or for at least forty years from the recording of the mortgage if the mortgage does not disclose the time when the note or indebtedness is payable or the time for full performance of the conditions of the mortgage, unless a notice is recorded pursuant to subsection (b) of this section, the mortgage shall be invalid as a further lien against the real property, provided an affidavit, subscribed and sworn to by the party in possession, stating the fact of such possession, is recorded on the land records of the town in which the property is situated.”

This statute provides for a means to discharge a mortgage which is unenforceable as a matter of law when the mortgagor or those owning the property have been in undisturbed possession of the property for EITHER a) more than twenty years after the stated maturity date (or twenty years after the maturity date if such date is not specifically stated but can be

determined by the terms of the mortgage or note), or b) more than forty years after the date of recording when the maturity date cannot be determined from the recorded mortgage.

In addition to meeting the above timeframes to allow for the mortgage to be discharged, the statute requires that an affidavit (prepared in accordance with Conn. Gen. Stat. § 47-12a) be executed by the current owner (even if not the original mortgagor) stating that the mortgagor or those subsequently owning the property have been in undisturbed possession for forty years and recorded on the land records of the town where the property is located.

Sample templates are attached here as [49-13a – Maturity Date](#) and [49-13a – No Maturity Date](#). With the affidavit recorded, the mortgage is statutorily released and the mortgage can be disregarded. Because the affidavit is signed by the current owner, the affidavit should be recorded prior to the transfer of title to a new owner.

The topic of unreleased mortgages in Connecticut and the various statutory ways to clear them was also discussed in a prior [New England Regional Midweek Update dated February 8, 2023](#).

As always, should you have a question about a particular chain of title and what will be required to issue policies of title insurance without exception to an unreleased mortgage of record, please contact a member of our underwriting team.



**Party Walls** By: Eileen C. O'Shaughnessy, Esq., RI Underwriting  
Counsel

A "party wall", also called a "wall in common", a "common wall", or a "shared wall" is a dividing wall between two connected and mutually supporting buildings of different owners, or intended to be between a building actually constructed and a contemplated one, usually standing half on the land of each owner, maintained at mutual cost of both owners, and subject to use by each owner consistent with the rights of the other.

A party wall does not need to be located exactly on the boundary line between two adjoining properties. Instead, it may stand entirely upon the land of one owner only. It takes the place of two walls that would have otherwise been erected by adjoining landowners, each owner holding in severalty that cross-portion of the wall on his or her tract, subject to an easement (called cross-easement) by the other owner for use of the wall as a perimeter wall of the owner's respective building, and for its support. The traditional party wall principle says that each owner acquires [title](#) to one-half of the wall, and each owner also is granted an [easement](#) for the support of the structure.

Individual properties will often maintain a party wall agreement acknowledged by all relevant parties. A party wall agreement stipulates rules around ownership and maintenance obligations for a shared wall. The goal of a party wall agreement is to obviate disputes between parties. In addition to shared walls, a party wall can also refer to one attached and adjacent to the property, walls belonging to a single building structure, dividing walls between adjoining units, and those standing on the land of two or more owners. It is important to note however, that the lack of a written agreement does not eliminate party wall rights. Many older homes and buildings have party walls without any written document establishing or confirming the rights and obligations of the parties.

Party walls can be created by various methods: by statute; by contract or agreement; by conveyance; by implied easement; or by use of the property.

Party walls generally take one of four primary forms: 1) A wall in which two adjoining owners are tenants in common; 2) A wall divided longitudinally into two strips, each strip belonging to an adjoining owner; 3) A wall which belongs entirely to one owner, subject to an easement in favor of the owner to have it maintained as a party wall; or 4) A wall divided longitudinally between two properties, each property being subject to a cross easement of support and/or division in favor of the other.

A party wall can be terminated in the following ways: 1) by agreement of the parties; 2) by the destruction of the wall as by fire, earthquake, or by any agency beyond the control of either party. (State law must be consulted); 3) by the destruction of the buildings, though the wall remains standing; 4) by demolition of the wall, as a nuisance, pursuant to an order of a public authority; 5) by abandonment, as where one having an easement in a wall formerly a side of his or her building erects a new wall on a different foundation; or 6) by failure to comply with a contractual provision, like one calling for a contribution to the cost and maintenance of the wall.

If a party wall lies along the property line, you must take exception in the title insurance policy to the terms of the agreement, if any. If the party wall is not located as provided in the agreement, you must separately except to rights in the party wall. If there is no agreement, you must separately except to rights in the party wall.

The existence of a party wall can sometimes be determined through the legal description, when one or more of the boundaries are recited as “through the wall. . .” or by reviewing a survey or plot plan of the property. If there is reason to believe the structure on the lot adjoins an abutting building an exception in the policy should always be taken. There are two standard ALTA Party Wall exceptions: one for situations where there is no recorded written agreement, and one where the title discloses a written agreement. Both exceptions can be found on Stewart’s Virtual Underwriter website here: [Party Walls \(Virtual Underwriter\)](#)

Please contact your local underwriter to discuss a specific transaction or with any questions about party walls.



## **Upcoming Education & Webinars**

Massachusetts Underwriters Talk Title Series 2025 – join the first installment of our monthly webinar hosted by members of the Massachusetts underwriting team on February 13. These are concise 30 minute webinars on various topics that impact title insurance and real estate in Massachusetts.

To Register for one or all of our webinars, follow this link: [Massachusetts Underwriters Talk Title Series - 2025](#)

**Estate Tax Liens**

**Thursday, February 13, 2025 @11:00-11:30 AM**

**Trusts**

**Wednesday, March 12, 2025 @10:00-10:30 AM**

**Orders of Conditions**

**Wednesday, April 9, 2025 @11:00 -11:30 AM**

**Plot Plans**

**Wednesday, May 7, 2025 @11:00-11:30 AM**

**Waterfront Properties**

**Wednesday, June 4, 2025 @11:00-11:30 AM**

**Use of shortened title searches-prior policies**

**Wednesday, July 9, 2025 @11:00-11:30 AM**

**Insuring Occupied properties**

**Wednesday, August 6, 2025 @11:00-11:30 AM**

**Municipal liens**

**Wednesday, September 10, 2025 @10:00-10:30 AM**

**Easements**

**Wednesday, October 8, 2025 @11:00-11:30 AM**

**Self-Dealing and Fiduciaries**

**Wednesday, November 5, 2025 @11:00-11:30 AM**

**Tenants by the Entirety**

**Wednesday, December 10, 2025 @11:00-11:30 AM**



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