

Dear Stewart Partners,

As this week started with Veteran's Day, we wanted to take a moment and thank all of those who have served our country and express gratitude for the sacrifices made by our country's veterans and their families. Thank you for your service.

In this week's update, we are continuing with our theme from last week on restrictive covenants. This week's article focuses on how these covenants impact title in Connecticut. In addition, we've included some reminders and updates about Vermont's notary public laws and important reminders about the necessary renewals for all Vermont commissioned notary publics.

Lastly, in case you missed it, Stewart issued a Special Alert on November 7, 2024. For details and a link to the bulletin, see below.



Restrictive Covenants on Real Property in Connecticut By: Frank Cammarano, Esq. Underwriting Counsel, Connecticut

Real property in Connecticut is commonly affected by private restrictions purporting to limit an owner's use of the property. Private restrictions are agreements or rules contained in a deed or other instrument to control the use of real property. Private restrictions differ from zoning regulations in that their creation and enforcement are grounded in real property and contract law, as opposed to the exercise of governmental authority. The validity and enforceability of these restrictive covenants is not always clear and often requires extensive research to arrive at an informed determination.

Creating Enforceable Restrictions in Connecticut

Enforceable restrictive covenants fall into three distinct categories: mutual covenants, general development schemes, and covenants for the benefit of retained land. Mutual covenants are contained in deeds exchanged between owners of adjoining lands or in a single document executed by both owners and recorded. Mutual covenants are therefore enforceable by either party to the agreement since the rights against each property are reciprocal. Restrictions created under a general development scheme are single restrictions or uniform sets of restrictions contained in deeds of building lots of a subdivision or collection of newly developed and adjoining properties. Restrictions created under a general development scheme are enforceable by any grantee of a property located within the development, and their successors, since each grantee accepts title to their property with notice of the common scheme and upon reliance that the development is uniformly

restricted. Restrictions can also be created where a grantor receives covenants in its favor from a grantee for the benefit and protection of retained land of the grantor adjoining the property conveyed to the grantee. Since the restrictive covenant is for the benefit of the remaining land of the grantor, it constitutes an easement running with the land.

Real and Personal Restrictions

The enforceability of a restriction once the dominant estate is conveyed depends on whether the restriction is real or personal to the grantor. A restriction that is personal does not run with the land, but is for the benefit of a particular person or entity. A real covenant runs with the land. Such a restriction is deemed an interest appurtenant and can be enforced by successive owners of the benefited property against subsequent owners of the burdened property. In determining whether a covenant is real or personal, courts examine the intention of the parties as expressed in the language of the document creating or imposing the restriction, the nature of the restriction, and the circumstances surrounding the transaction. Since the express language of the restriction is one of the factors used by the courts to determine the intention of the parties, ambiguity as to this issue can be avoided by stating that the parties agree that the covenant shall run with the land and be binding upon the heirs, successors and assigns of the respective parties” or “upon the heirs, successors and assigns of the grantee” or “upon all future owners of the property.”

The use of the words of succession binding the heirs and assigns of the grantee of restricted land does not always cause the restriction to run with the land if the restriction is personal in nature. In [Pulver v. Mascolo, 155 Conn. 644 \(1967\)](#), the Court determined that a covenant requiring prior approval of the common grantor development company for the erection of any building on a lot within a development was personal to the development company and could not be enforced by lot owners in the development against other lot owners. Once the common grantor divests itself of any interest in the development, the approval right is no longer enforceable.

Duration and Modification of Restrictions

When restrictive covenants run with the land, they can permanently affect the property, unless they have a limited duration or are eliminated by some other means. [Harris v. Pease, 135 Conn. 535 \(1949\)](#). The most common and straightforward means of terminating restrictions is for those who have the right to enforce them to execute and record a release or termination agreement of the same in the land records of the municipality(ies) in which the subject properties are located. [Marion Road Association v. Harlow, 1 Conn. App. 329 \(1984\)](#). For example, lot owners in a subdivision subject to a common set of restrictions may join together and execute and record a release or termination of the restrictions encumbering the lots located in the subdivision. Restrictions can be terminated when the property benefiting from the covenants merges with the property burdened by them. If a set of restrictions are personal in nature, they will become unenforceable once the grantor or entity who imposed them ceases to exist or otherwise relinquishes any interest in title to the property. Restrictions may also be invalid on their face or become invalid and therefore unenforceable after creation. For example, racial restrictions were not uncommon in some areas of Connecticut throughout history but are now invalid and unenforceable pursuant to [C.G.S. Sec. 47-12b](#). Restrictions that are limited in duration end by their own terms upon the passage of a defined period or the occurrence of a particular event.

Restrictions may be modified by amendment executed and recorded in the same manner as the original set of restrictions. Any amendment to an original set of restrictions requires the consent of every party having the right to enforce said restrictions absent specific provisions permitting the restrictions to be modified by a specific party or number of parties. [Mannweiler v. LaFlamme, 46 Conn. App. 525 \(1997\)](#).

Enforcement of Restrictions

Uniform Plan – In [Contegni v. Payne, 18 Conn. App. 47 \(1989\)](#) the Appellate Court reviewed the factors used to establish the existence of a common grantor's intent to develop the land according to a uniform plan. These factors include (1) the common grantor's selling or stating an intention to sell an entire tract of land, (2) the common grantor's exhibiting a map or plot of the entire tract at the time of the sale of one of the parcels, (3) the actual development of the tract in accordance with the restrictions and (4) a substantial uniformity in the restrictions. Although the Court found that the developer had intended to create a uniform plan in this case, the Court held that the restrictions could not be enforced as such because the boundaries of the area subject to the uniform development could not be determined with reasonable certainty.

Unclean Hands – When the party attempting to enforce restrictions which also burden their own property has also violated those restrictions, relief will be unavailable. If there are multiple restrictions, however, a party may still enforce a restriction that it has not violated. *Grady v. Schmitz*, 16 Conn. App. 292 (1988), [Maganini v. Hodgson, 138 Conn. 188 \(1951\)](#).

Changed Circumstances – When a substantial change in the character of the original development completely frustrates the intent of the original covenant, it would be inequitable to enforce the restriction. [Shippan Point Association v. McManus, 34 Conn. App. 209 \(1994\)](#).

Statute of Limitations – [C.G.S. Sec. 52-575a](#) imposes a three-year limitation on actions to enforce private restrictions following actual or constructive knowledge of a violation. This applies to restrictions in recorded instruments or notations on filed maps pertaining to the use of privately-owned land, the type of structures that may be erected thereon or the location of such structures. It does not apply to any private restriction or notation pertaining to any public utility easement; any right-of-way; any park or open space land; any private driveway, roadway or street; or any sewer line or water line.

The Marketable Record Title Act – Private restrictions may be extinguished by operation of the Marketable Record Title Act ("MRTA"), [C.G.S. Sec. 47-33b](#) et seq. Pursuant to the act, "any person who has an unbroken record chain of title to an interest in land for a period of forty years, plus any additional period of time necessary to trace the title back to the latest connecting title instrument of earlier record has a 'marketable record title' subject only to those pre-root of title matters that are excepted under the statute or are caused to reappear in the latest forty year record chain of title." *Mizla v. Depalo*, 183 Conn. 59, 64 (1981). The act "declares null and void any interest in real property not specifically described in the deed to the property which it purports to affect, unless within a forty-year period, a notice specifically reciting the claimed interest is placed on the land records in the affected land's chain of title." *Schulz v. Syversten*, 219 Conn. 81, 84 (1991).

As you can see, the impact of a restriction on land can be very fact determinative and is not always clear. Should your chain of title disclose a restriction, whether personal or real, and

you have questions on how to insure or what may be required to satisfy compliance, please reach out to Stewart's underwriting team in Connecticut for further guidance.



Notary Public Updates in Vermont By: Jill Spinelli, Esq., Associate Senior Underwriting Counsel, Vermont

The following are some recent updates and reminders regarding Vermont's Notary Public laws.

Remote Online Notarization Updates

In February, 2024, the Vermont Secretary of State published its Emergency Rules for Remote and Electronic Notarial Acts, authorizing notaries public to perform notarial acts for remotely located individuals and on electronic records. The full text of the Emergency Rules can be found [here](#). (See Part 4 authorizing remote notarial acts and Parts 5 & 6 authorizing Electronic-records notarization.) The Secretary of State's Office of Professional Regulation has now published its proposed rules that will create the standards for issuing commissions as well as special endorsements for notaries public to perform these notarial acts. The proposed rules can be found [here](#). Public Hearings on the proposed rules were held on 10/22/24 and 10/24/24 and the public comment period closed on 10/31/24. The final rules are anticipated early next year, with official guidance to follow.

Notary Public Commission Renewals

All Vermont notary commissions are set to expire in January, 2025 and the renewal application will open in mid-December through the Secretary of State's office. As a reminder, continuing education requirements apply for all non-exempt commissions. Attorneys must obtain a notary public commission to provide notary public services, however, they are exempt from the continuing education requirements. In order to renew, you'll need to follow these steps:

1. Log in to your online services account [Here](#).
2. Select "renew license".
3. Complete the Vermont online renewal application.
4. Pay the non-refundable renewal fee (if applicable).
5. Upload continuing education certificates (if applicable).

If you do not complete your renewal by midnight of January 31, 2025, late penalties will apply per 3 V.S.A §127(d)(1).

Notary Stamp Requirements

As a reminder, a notary stamp is not required in Vermont, but if a stamp is used, it must comply with the following:

1. Be copyable with the record to which it is affixed or attached;
2. Contain the notary public's name;
3. Contain the jurisdiction of the notary public (State and County);
4. Contain the notary public's commission number; and

5. May not contain an expired expiration date. The stamp must be replaced every two-years when commissions expire.
6. May not contain the Vermont State Seal.

If no stamp is used, the notary public must clearly print or type the following information:

1. Full name of notary public;
2. Date of notarial act;
3. Jurisdiction (state and county);
4. Name of person signing record;
5. Title of office of the notary public (“notary public”);
6. Date of expiration of the notary public’s commission
7. Notary Public’s Commission No.

Statutory Notarial Act Certificates

Vermont provides a statutory form for certifying a notarial act. You can find the statutory form [Here](#) for an acknowledgement in an individual capacity, acknowledgement in a representative capacity, an affirmation or oath verification, and attesting a signature.



In Case You Missed It

Special Alert: SA2024350 – Ronnie Gutierrez

On November 7, 2024 Stewart issued a Special Alert to all issuing offices advising that prior to closing any transaction and issuing commitments or policies involving Ronnie Gutierrez, approval must be obtained. To view the Special Alert, follow this link: [SA2024350](#) (virtualunderwriter.com).

As a reminder, all issuing offices must search the names of the parties to the transaction, including the seller, buyer/borrower, payoff lender, and new lender, using the Special Alerts database, which may be accessed at <http://specialalerts.stewart.com/> or as a link from Stewart.com and/or Virtual Underwriter.



[Meet Our Team | Stewart Connecticut](#)

[Meet Our Team | Stewart Maine](#)

[Meet Our Team | Stewart Massachusetts](#)

[Meet Our Team | Stewart New Hampshire](#)

[Meet Our Team | Stewart Rhode Island](#)



1-800-STEWART

www.stewart.com

© 2024 Stewart. All rights reserved.

This email was sent to your address because your email preferences are set to receive our updates.

[unsubscribe](#)