

Dear Stewart Partners,

With February upon us we hope you are enjoying the days finally getting longer. In this Mid-Week Update, we are excited to announce the rollout of CONNECT CLOSE, Stewart's state of the art proprietary title production engine for attorney agents. We also review Estate Tax Liens in Massachusetts, old and undischarged mortgages in Maine, and some other useful items. We hope this information proves useful. As always, we are happy to answer any questions you may have on these topics.



### **Stewart Launches CONNECT CLOSE, a Premier Title Production System for Attorney Agents**

On January 30, 2025, Stewart announced the launch of Connect Close, described as a "next-generation" title production system. Created specifically for attorney agents, Connect Close represents a major step forward in Stewart's promise to deliver industry-leading technology solutions to its agents. This initial rollout was for Massachusetts, Connecticut, and Rhode Island. If you are in one of those states, we encourage you to reach out to your Agency Services Representative to discuss how this exciting new software might enhance your practice. To view the Press Release, please follow this link: [Stewart Title Launches Connect Close, a Premier Title Production System for Attorney Agents | Business Wire](#)



### **Estate Tax Liens in Massachusetts** By Mark A. Jones, Esq., Assoc. Senior Underwriting Counsel, Massachusetts and Rhode Island

Whenever a person owning property or owning a beneficial interest in property in Massachusetts dies, it is important to be aware that there are automatic estate tax liens that attach to the real estate without the need for the Massachusetts Department of Revenue or the Internal Revenue Service to record a notice of lien at the Registry of Deeds. The estate tax is tax assessed based on the value of the decedent's gross estate prior to any distribution to beneficiaries of the estate.

#### **What is included in the Gross Estate?**

For purposes of the real estate practitioner, it is important to know that for both Federal and Massachusetts estate tax purposes, the gross estate includes the following:

- Certain transfers made during the decedent's life, including transfers to trusts
- Real estate held as joint tenants with rights of survivorship
- Real estate held as tenants by the entirety
- Property over which the decedent possessed a general power of appointment
- Retained life estates

As you can see above, there are many items listed that you wouldn't expect to be included, such as joint tenancies, tenancies by the entirety and retained life estates. Given the high value of many Massachusetts properties, it is easy to see how state estate tax filing thresholds could be easily surpassed. In Massachusetts, for deaths after January 1, 2023, a decedent with a gross estate over \$2,000,000 would require an estate tax return filing. The Federal exclusion amount in 2025 is \$13,990,000.

### Clearing the liens from title

If the decedent's estate falls below both of those thresholds there is an Estate Tax Lien Affidavit pursuant to M.G.L. c.65c, §14(a) that can be recorded at the Registry of Deeds by someone in constructive possession of the property (see REBA Form 32). The Affidavit serves as satisfactory evidence that no estate tax lien attached. The Affidavit must state the name, date of death, and property address of the decedent and a statement that the gross estate of the decedent does not necessitate a Federal or Massachusetts estate tax filing. Often this statement may only be true as to the Federal lien as the Federal threshold is much higher. Even if the threshold for the Federal lien is surpassed, if the real estate is non-probate property (meaning not coming out of a decedent's estate), and the transfer is to a purchaser for value, there is no need to record an affidavit or get an estate tax release (see REBA Title Standard No. 3). If none of the above safe harbors apply to the transaction in question, an estate tax release would need to be obtained from the Department of Revenue and the Internal Revenue Service.

As always, if you have specific questions as to whether a property you are insuring may be subject to this inchoate lien, please reach out to any of our underwriters.

Also, please note that I will be presenting a webinar as part of our Stewart Underwriters Talk Title series on this particular topic and answering any questions on February 13th, 2025 from 11:00-11:30 AM. For Registration information follow the link below.



### **Dealing with Unreleased Mortgages in Maine - 14 M.R.S. § 6104 and Maine Title Standard 608** By Zachary Greenfield, Esq., Maine State Counsel

Last week we covered the Massachusetts "obsolete mortgage statute." Continuing that trend, this week we cover Maine's comparable statute and title standard. That statute, 14 M.R.S. § 6104, provides as follows:

*When the record title of real estate is encumbered by an undischarged mortgage, and the mortgagor and those having his estate in the premises have been in uninterrupted possession of such real estate for 20 years after the expiration of the time limited in the mortgage for the full performance of the conditions thereof, he . . . may apply to the Superior Court . . . by complaint setting forth the facts and asking for a decree as*

*hereinafter provided. If after notice to all persons interested . . . no evidence is offered of any payment within said 20 years or of any other act within said time, in recognition of its existence as a valid mortgage, the Superior Court upon hearing may enter a decree setting forth such facts and its findings in relation thereto, which decree shall within 30 days be recorded in the registry of deeds where the mortgage is recorded. Thereafter no action shall be brought by any person to enforce a title under said mortgage.*

14 M.R.S. § 6104 essentially establishes a cause of action and resulting judicial remedy whereby, after the giving of notice, the proponent of a mortgage with a stated maturity date that expired more than 20 years ago bears the burden of coming forward to prove the continuing validity of the mortgage. In the absence of that proof, the court may enter an order which, after recording in the Registry of Deeds, acts as a bar to an action to enforce the mortgage. In the context of a real estate transaction with customary deadlines for title objections, due diligence, and closing, however, following this time-consuming procedure would likely be the death knell for many transactions. Fortunately, the Maine Title Standards adopt a far more practical approach.

The Maine Title Standards are set up as Problems and Recommendations. The Problem set forth in Maine Title Standard 608 is: “When, if ever, may an undischarged mortgage . . . be considered as not encumbering the premises?” The Recommendations to this Problem are divided between (A) mortgages containing maturity dates, and (B) mortgages without maturity dates, as follows:

- **(A) Mortgage That Includes Maturity Date:** 20 years after the time limited for performance therein, a mortgage should not be considered an encumbrance . . . unless an instrument of record recognizes the continuing validity of the mortgage or the title examiner has knowledge of payment thereon or other indication of claim within such 20-year period and to date. If such an instrument appears of record or the title examiner has such knowledge, then the mortgage should not be considered an encumbrance on the subject premises 20 years after the date of such instrument or payment.

This Recommendation is based directly upon the cause of action and judicial remedy provided by 14 M.R.S. § 6104. However, it reflects the practical reality that few buyers will agree to delay closing to allow a seller to file a complaint in court, complete services of process, often by publication, file a dispositive motion or have a hearing, obtain a judgment, and wait for the appeal period to expire. Instead, it recognizes the common practice of allowing title examiners and attorneys to treat mortgages as effectively discharged 20 years after their stated maturity dates unless a recorded instrument attests to the continuing validity of the mortgage, or they have knowledge of payment or any indication of a claim of continuing validity within said period. Although there is some debate among practitioners whether following the Title Standard in lieu of the statutory procedure fails to render title marketable, in most situations, doing so will at least render title insurable.

- **(B) Mortgage That does Not Include Maturity Date:** If there is no time limited for performance set forth in the mortgage, then 50 years (60 years for railroad mortgages) after the date of execution of the mortgage, a mortgage should not be considered an encumbrance on the subject premises unless an instrument of record recognizes the continuing validity of the mortgage or the title examiner has knowledge of payment thereon or other indication of claim within such 50-year period

(60 years for railroad mortgages) and to date. If such an instrument appears of record or the title examiner has such knowledge, then the mortgage should not be considered an encumbrance on the subject premises 20 years after the date of such instrument or payment.

This Recommendation reflects the assumption that the majority of mortgages secure promissory notes with 30-year repayment terms. Once that term has expired, Maine's 20-year statute of limitations for actions on promissory notes, 14 M.R.S. § 751, presumably begins running. As such, adding those two periods together, a mortgage without a stated maturity date that has been recorded for 50 years is presumably no longer enforceable.

To summarize, the general rule in Maine is that undischarged mortgages with stated maturity dates are considered ineffective 20 years after the stated maturity date unless evidence exists to the contrary, and undischarged mortgages without stated maturity dates are considered ineffective 50 years after recording. However, because each situation will differ, we encourage you to contact your Stewart underwriter to review these issues whenever they arise.



### **In case you missed it**

#### **Stewart Bulletin MU2025001**

Please see Stewart Bulletin MU2025001 regarding new ALTA endorsements available for use in Massachusetts [Stewart Bulletin MU2025001](#).

#### **Special Alert – All Massachusetts Issuing Offices SA202519**

On January 30, 2025 Stewart issued a Special Alert to all Massachusetts issuing offices to not accept any orders, issue commitment or preliminary reports or close any transactions involving the following person or property:

**200 Jefferson Ave, Salem, MA 01970 (Essex County)**

**200 Jefferson Avenue Condominium**

**Stephen S. Lovely**

To view the Special Alert, follow this link: [Special Alert: SA202519](#)



### **Upcoming Education**

#### **Massachusetts Underwriters Talk Title Series 2025**

Please join the first installment of our monthly webinar hosted by members of the Massachusetts underwriting team on February 13th. 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 AM -11:30 AM EST**

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

**ORDERS OF CONDITIONS - Wednesday, April 9, 2025 @ 11:00-11:30 AM EST**

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

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

**USE OF SHORTENED SEARCHES -Wednesday, July 9, 2025 @ 11:00-11:30 AM EST**

**INSURING OCCUPIED PROPERTIES -Wednesday, August 6, 2025 @ 11:00-11:30 AM EST**

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

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

**SELF DEALING & FIDICUARIES - Wednesday, November 5, 2025 @ 11:00-11:30 AM EST**

**TENANTS BY THE ENTIRETY - Wednesday, December 10, 2025 @ 11:00-11:30 AM EST**



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