New England Regional Midweek Update
3/26/2025

Dear Stewart Partners,

Spring has officially arrived! In this week's Mid-Week Update, we are providing a brief overview of home equity contracts, also known as home equity investments or HEI's. Additionally, as part of our ongoing series on addressing undischarged mortgages in the chain of title, we are highlighting the process for validating a release of mortgage executed by an entity that is not the record holder of the mortgage, as outlined in Connecticut General Statutes Section 49-9a. We also cover the process of petitioning the court to discharge a mortgage or lien under Connecticut General Statutes Section 49-13 when no other alternatives remain.

We've also included some information on FinCEN's real estate reporting rule that will be effective as of December 1, 2025. Lastly, we've included information about upcoming education, as well as links to previously recorded education with a New Hampshire focus. For those New Hampshire practitioners who are looking for CLE credit, certificates of attendance are available to download once the webinar is accessed.

We hope this information proves useful. As always, we are happy to answer any questions you may have on these topics.

More Help with CT Release Issues: Connecticut General Statutes 49-9a and 49-13 By: David M. Piechota, Esq., Connecticut Underwriting Counsel

In recent Mid-Week updates, we have featured several statutory remedies that can be useful tools for clearing unreleased mortgages in the State of Connecticut. Over the past few months, we have covered Connecticut General Statutes Sections 49-13a, 49-8, and 49-8a, as well as Connecticut Standard of Title Section 18.7, all of which help in releasing mortgages that cloud title in Connecticut. This article focuses on other potential methods to clear title and provide marketable title: Connecticut General Statutes Sections 49-9a and 49-13.

Connecticut General Statutes Section 49-9a: Validation of Mortgage Release. Affidavit.

Connecticut General Statutes Section 49-9a provides a remedy when the land records do not include the necessary assignments from one lender to another. This often occurs when a mortgage is originally issued to "Lender A" but the release is signed by "Lender B" without a recorded assignment of mortgage from "Lender A" to "Lender B." In such cases, Section

49-9a allows for the recording of an affidavit to validate the release of the mortgage, provided certain conditions are met.

Requirements:

- The statute applies only to one-to four-family residential real property, including a residential unit in any common interest community as defined in Section 47-202.
- The release must have been recorded for more than five years.
- No action must be pending that challenges the release, and no lis pendens (notice of pending lawsuit) should be recorded.
- The affiant (person making the affidavit) must be the property owner, and the property owner must have been the record owner for at least two years prior to the affidavit's date. The affidavit must be recorded and include the following information:
- State that the affiant is the current owner (or the personal representative if deceased) of record and has owned the property described in the mortgage for at least two years prior to the date of the affidavit.
- Provide the recording information for the mortgage, any assignments of the mortgage, and the release.
- State that since the release was recorded, the affiant has not received any demand for payment of the mortgage debt, nor any notice or communication indicating that the debt remains due.
- State that to the best of the affiant's knowledge, the mortgage debt has been paid in full.

Once recorded, the affidavit will act to release the lien of the mortgage as to the property described therein. However, this remedy is not available if the release was obtained through forgery or fraud.

Connecticut General Statutes Section 49-13: Petition for Discharge of Mortgage, Lis Pendens, or Lien

Connecticut General Statutes Section 49-13 provides an additional mechanism to clear title by petitioning the court to discharge a mortgage, lis pendens, or other lien that may be invalid or ineffective.

Petition for Discharge of Mortgage

Under Section 49-13, a person may petition the Superior Court to discharge a mortgage or lien in some of the following circumstances:

- If the property is encumbered by an undischarged mortgage, and:
- The mortgagor (borrower) or those holding the mortgagor's interest have been in undisturbed possession for at least six years after the expiration of the mortgage terms; or
- The promissory note or other written evidence of indebtedness is payable on demand, and no payment has been made in the past 17 years; or
- The mortgage does not specify when the note is due, and 10 years have passed without payment; or
- The note or evidence of indebtedness has been paid, or a bona fide offer to pay has been made and tender of payment pursuant to section 49-8; or
- The mortgage has become invalid, and no release has been issued.

The person owning the property, or the equity in the property, may bring the petition to the superior court setting forth the facts and claiming a judgment as provided in this section. If the court finds that thelien is invalid as a lien against the property, the court may render a judgment reciting the facts and its findings and declaring the lien invalid as a lien against the real estate. The judgment, when recorded, shall discharge the encumbrance on the land records.

Sections 49-9a and 49-13 of the Connecticut General Statutes offer important remedies for clearing clouded titles and ensuring marketable title. Section 49-9a provides a mechanism to validate improperly executed mortgage releases, while Section 49-13 allows for the judicial discharge of mortgages, liens, and attachments that may be invalid. These statutory tools are crucial for property owners and practitioners seeking to resolve title issues in Connecticut.

Home Equity Contracts By: Frank Cammarano, Esq., Connecticut Underwriting Counsel

Home equity contracts, also commonly referred to as home equity investments (HEI's), home equity agreements, or shared equity agreements; are financial agreements in which a homeowner gets an upfront cash payment from a company and, in exchange, must repay a lump sum amount in the future that is based, in part, on their home's value. The homeowner must typically repay the home equity contract company with a single large payment, often called the "repayment amount" or "settlement amount." Repayment is due by the end of the contract term or upon a triggering event.

Home equity contracts were designed as a way for companies to gain exposure to the home price appreciation generated from owner-occupied residential real estate without exposure to the operational risks involved in owning real estate. The homeowner retains the exclusive right to occupy the home and is responsible for the care and maintenance of the home, including property taxes, homeowner's insurance, and any other debt obligations secured by the home. Like traditional mortgage loans, home equity contracts are secured by a lien on the property. Most home equity contracts are designed for owner-occupied homes, with some containing terms and conditions that restrict homeowners' ability to rent their homes or move elsewhere, even temporarily.

Homeowners must repay the home equity contract by the end of the contract term, usually 10 to 30 years. The repayment amount can run in the hundreds of thousands of dollars. Repayment is often triggered by the sale of the home, but can also be triggered by other events, such as default on any senior lien (such as the primary mortgage), failure to pay property taxes or insurance, or death of the homeowner.

Each home equity contract company has its own methodology for calculating the repayment amount, but they all consider an upfront payment to the consumer, the starting and ending home values, and a multiplier. Key features of home equity contracts include the following:

Upfront payment to the homeowner: The more money a homeowner borrows upfront, the more they will have to repay at settlement. The upfront payment to the homeowner can be reduced to cover closing costs, including processing fees paid to the home equity contract company and third-party fees such as those for appraisals, inspections, and government taxes or recording fees.

Home value appreciation: The more a home's value appreciates, the more the homeowner will pay to satisfy a home equity contract, subject to any rate cap. The home's starting value is determined at origination by an appraisal or automated valuation model. If the home is sold, the final value of the home is typically the sale price. In other scenarios, a third party such as an appraiser hired by the home equity company typically determines the home's final value.

Multiplier: Home equity contracts require a multiple of the upfront payment to the homeowner. For example, a homeowner may get paid 10% of the value of their home in exchange for a 20% stake in their home's future value. This 2x multiple means that the company would double their money before factoring in any home price appreciation.

Discounted starting home values: Some home equity contracts discount the starting value of the home. For example, a company may set the starting home value 25% lower than the actual appraised value, ensuring a profit unless the home's price decreases by more than 25%. At the end of the contract, the home equity contract company would calculate the home appreciation as the difference between the discounted starting value and the final undiscounted value.

Rate caps: Home equity contract companies often have rate caps that limit how fast the repayment amount grows. Rate caps are equivalent to a maximum interest rate on the initial payment to the homeowner and generally run in the 18-20% range.

Home equity contracts carry various risks to consumers. These products are often more expensive than traditional secured financing options, even if the home depreciates in value. They require homeowners to repay a large amount, sometimes in the hundreds of thousands of dollars, in a single payment. Homeowners who cannot pay the full settlement amount might be forced to sell their home or face foreclosure. Further, home equity contracts are complex financial contracts, and the current lack of standardized disclosures can make it difficult to understand them or compare them to other options.

Most home equity contract companies operating today were founded less than ten years ago, so it is still too early to determine how their customers manage when they reach the end of the contract term. Home equity contracts with 10-year terms may allow consumers to rollover into a new home equity contract, but only if they have sufficient equity remaining. Since a home equity contract is secured by a lien on title to the property, the lender could choose to initiate foreclosure in some circumstances.

In Commonwealth of Massachusetts v. Hometap Equity Partners, LLC and HomeTap Management Holdings LLC, the Massachusetts Attorney General has alleged "systematic and pervasive unfair or deceptive acts and practices in connection with a purportedly-novel financial product which operate to strip Massachusetts homeowners of home equity" in violation of the state's consumer protection laws, including mortgage and foreclosure prevention laws, "putting financially vulnerable homeowners at high risk of losing their homes." The lawsuit further alleges that Hometap's "Hometap HEI" product is a "unlawful reverse mortgage product."

Given the unique structure of such contracts, home equity contracts may not be insurable with a loan policy of title insurance. Should you be asked to insure a home equity contract type of lien or mortgage, please reach out to your Stewart underwriting counsel prior to committing to insure such transactions.

FinCEN's "NEW" Anti-Money Laundering Rule By: Jutta R. Deeney, Esq., New England Regional Underwriting Counsel

FinCEN has been a topic of much discussion in the past few months and much of that focus has been on the Beneficial Ownership Information ("BOI") reporting requirement. We've discussed this requirement, and the flip flopping court ordered stays in previous Mid-Week updates. (To view those prior articles follow these links: January 8, 2025 Mid-Week and February 26, 2025 Mid-Week). The most recent published information is that the current administration will not be enforcing the BOI reporting requirement as to domestic entities.

There is, however, another FinCEN rule that is unrelated to the litigation which been filed across the country that all real estate title and settlement agents should be aware of and start preparing for. This rule will be effective on December 1, 2025. For some of Stewart's title policy issuing agents the rule may sound somewhat familiar, as it is modeled on the Geographic Targeting Order (GTO) that has been in place for numerous years. The GTO, however, only applied to a small number of regions in the United States. In the New England area, it applied only to certain counties in Massachusetts and Connecticut. The new FinCEN rule will apply across the country and will require reporting to the federal government of certain real estate transactions. Please note, however, that the GTOs in Massachusetts and Connecticut (and elsewhere) remain in effect and are separate and apart from the BOI reporting requirements and the new FinCEN rule.

The new rule is aimed at combating money laundering and other illicit activities. The rule requires that certain residential real estate transactions involving transfers to entities without institutional financing be reported, including information about the underlying owner of the entity. The rule is complex, and there are certain carve-outs and exceptions to the rule. Much of the reporting requirements may fall to the settlement agent in the transaction and we understand how important it is for you to be equipped with the necessary knowledge and tools to comply with this new federal rule. In the coming months, Stewart will be communicating insights and information about the rule. If you have any questions about the communications you receive or about the reporting requirements, please don't hesitate to reach out to your account service representative or your local underwriting counsel.

Educational Opportunities

Stewart Talk Title

Our April installment is right around the corner and will focus on Order of Conditions. Rhonda Duddy, will lead the presentation. Attendees will gain a comprehensive understanding of these orders and their impact on title insurance. To register for this or any of our upcoming Talk Title webinars, follow this link: MA Underwriters Talk Title - Registration Link

Need NH CLE Credits?

We recently hosted two live webinars for New Hampshire practitioners. If you missed either presentation, they are both available in recorded format through Stewart's exclusive agency education web portal, Stewart Academy. To access follow this link: Stewart Academy

MCLE Program on April 7, 2025 – Marking Up Title Commitments, Eliminating Exceptions and Getting Endorsements

Join Stewart's Jutta Deeney and Tracie Kester, along with Amanda Eckhoff from Robinson + Cole, for a Massachusetts Continuing Legal Education webinar on April 7, 2025 from 1 PM to 4 PM. The panelists will discuss the importance of reviewing a title commitment, negotiating the removal of exceptions, and requesting additional coverage by way of endorsements. This MCLE does offer continuing legal education credit in various states for this program. For more about credits or to register, go to MCLE's website here: MCLE | New England: CLE Programs, Webcasts and Publications - Registration Link

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