



Dear Stewart Partners,

In this week's Mid-Week Update, we are providing information on aspects of non-judicial tax foreclosures in Connecticut and how properties with zoning violations are treated in Vermont after the 15-year statute of limitations has expired.

We have also included a link to a Vermont seminar offered on-line **TODAY at 10:00am** on Short Term Rentals in Vermont as well as a May 29, 2024 New England Land Title Association (NELTA) webinar discussing problems with private ways. Lastly, because cybercrime is an everyday threat and the tricks and scams are always evolving, we've included a link to a complimentary American Land Title Association (ALTA) webinar scheduled for June entitled: Best Practices to Identify Phishing Emails.



Connecticut Tax Auction Sales by: Nancy Walkley, Esq., Associate Senior Underwriting Counsel – Connecticut State Counsel

In Connecticut a tax collector of a municipality has three options for collecting delinquent real estate taxes: foreclosure of the tax liens in a traditional judicial foreclosure action; assignment of the liens for consideration to a third party (though liens still need to be released for clear title in that instance); or levy upon and sell the property in accordance with the provisions of Section 12-157 of the Conn. Gen. Statutes. This last option results in a non-judicial foreclosure and no court record exists for a title searcher to examine. We have been receiving requests to search properties in which tax collector deeds appear in the chain of title more frequently than ever and which result in a detailed analysis to determine insurability as described below.

The tax collector or its agent auctions the property and signs a deed to the successful bidder, which sits unrecorded in the town clerk's office. If, within the six-month redemption period that follows the auction, neither the property owner nor any encumbrancer redeems by paying all back taxes and other charges due, the tax collector's deed is then recorded. Due to the fact that tax collectors' sales are non-judicial there is neither court oversight of the sale nor service of process by a state marshal. Consequently, these sales are closely scrutinized for compliance with all statutory requirements. This includes proper notice, filing and publication requirements that govern the sales. Such compliance is essential to marketability of title. Connecticut Standard of Title 29.1 addresses the insurability of titles obtained through such a tax sale addressing many aspects, including the effect of failed notices to be received by parties with interests in the property and whether the auction process can be used if the taxpayer is deceased.

If you encounter in the chain of title to the property being searched a tax collector's deed as set forth in the Standard of Title there should also be an affidavit of tax collector that is filed with copies of all notices and other evidence of compliance with the governing statute confirming that due process has been followed. If no affidavit is recorded, title is not insurable. Additionally, the title search must disclose all interest holders, including those who held mortgages or other liens, immediately prior to the filing of the first Notice of Auction. The tax collector's affidavit must be reviewed to confirm that holders of all such interests received the required statutory notice. The notice requirements are extensive, complicated and time sensitive.

In addition to evaluating the affidavit, the tax collector deed must be of record at least one year without challenge for the property to be insurable based on the statute of limitations set forth in CGS 12-159b.

Although there has been much discussion nationwide about the constitutionality of tax sale foreclosures as a result of the Supreme Court's decision in Tyler v. Hennepin County, 598 U.S. 631 (2023), Connecticut's statute, as it relates to the non-judicial tax sale foreclosure, does not allow the municipality to retain excess sale proceeds and therefore, the concerns raised in Tyler are inapplicable. If the sale produces proceeds that exceed the debt, penalties, fees and costs, the municipality must follow certain procedures set forth in the statute relative to those funds.

If you encounter a tax collector deed in the chain of title of a search requested for a client purchase or refinance, please contact a Stewart underwriter to confirm if the property can be insured or if remedial efforts will be needed once the tax collector affidavit is reviewed.



Zoning Violations in Vermont – Beyond the 15 Year Statute of Limitations by: Jill Spinelli Quong, Esq., Associate Senior Underwriting Counsel – Vermont State Counsel

Vermont law requires municipalities to bring an enforcement action for zoning violations within 15 years, measured from the date that the violation first occurred. 24 V.S.A. §4454(a). The Vermont Supreme Court recently weighed in on the question of whether the Statute of Limitations (SOL) applies to both structural violations as well as use violations, holding that it does. Below is a summary of this important decision as well as a discussion of how one Vermont city is treating its properties with violations beyond the 15-year limitations period, followed by some guidance for issuing Title Insurance on these unique properties.

In Re 204 North Avenue NOV (2019 VT 52) ([In re 204 North Avenue NOV :: 2019 :: Vermont Supreme Court Decisions :: Vermont Case Law :: Vermont Law :: US Law :: Justia](#))

In 2017, the City of Burlington issued a Notice of Violation (NOV) for the conversion of a duplex to a triplex, 25 years after the violation first occurred, under the theory that a use violation is a "recurring" or "ongoing" violation and therefore a statute of limitations does not toll. In response, a group of landlords sued the City.

24 V.S.A §4454(a) provides, in part:

1. An action, injunction, or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required municipal land use permit may be instituted...within 15 years from the date the alleged violation first occurred and not thereafter....

The Vermont Supreme Court determined that legislative intent and the plain construction of the statute justified its determination that all zoning violations, including use violations, are limited by the 15-year statute of limitations. The Court cited streamlining title searches and increasing confidence in property ownership as legitimate statutory purposes.

Following the Supreme Court's decision in *In Re 204 North Avenue NOV*, the City of Burlington designated these properties as having "unenforceable violations" specifically rejecting treatment of these properties as "non-conforming". The City did so to ensure that any protections afforded to non-conforming properties not be bestowed on those with unenforceable violations. Further, the City of Burlington updated their Zoning Ordinance to limit the time for "abandonment" for unenforceable violations to 60 days, rather than the one year that non-conforming properties have. This means that any lapse in use of a property with an unenforceable violation must be very temporary in order to keep its protected status.

If, for example, the violation in *IN Re 204 North Avenue NOV* (use of the Property as a triplex rather than a duplex) were to cease for lack of a tenant for more than 60 days, a relatively foreseeable event, the property owner could face a renewed NOV and enforcement action that would not be avoidable under the Statute of Limitations because of the intervening abandonment.

Furthermore, Burlington has adopted a provision that allows the City to withhold the issuance of any new permits for properties with uncorrected zoning violations, including properties with unenforceable violations, further complicating a property owner's rights as to these properties going forward.

While the City of Burlington has made it clear that it does not want its enforcement capabilities limited by 24 V.S.A. Section 4454(a), other municipalities have not treated properties with violations beyond the SOLs the same way. Rather, many municipalities treat these unenforceable violations as non-conforming, affording more certainty for property owners on how their property will be treated in the future. The concern, however, is that the precedent Burlington is setting could be adopted by any municipality at any time.

For purposes of issuing title insurance on properties with violations beyond the SOL period, the following underwriting requirements must be met:

1. Within the City of Burlington: The violation must be listed as an exception to title in both the Loan and Owner's policies of title insurance.
2. All other municipalities: In order to remove a known violation that is beyond the SOL as an exception in the policy, the policy issuing agent must obtain the following:
 - a. Letter from an appropriate municipal official (i.e., Zoning Administrative Officer or other appropriate official) providing the following:
 1. A description of the violation; and

2. A statement that the violation is beyond the 15-year statute of limitations set forth in 24 V.S.A. Section 4454(a); and
3. A statement as to how the violation will be treated by the municipality (i.e., non-conforming use/structure or otherwise); and
4. A statement that the municipality will not seek to enforce the bylaw with respect to that violation because it is beyond the statutory time period to do so; and
5. A description of what constitutes discontinuance of the violation and what happens in the event the violation is discontinued.

Understanding how a municipality treats its properties with violations after the SOL period has run will provide Vermont real estate attorneys the necessary information that they need to disclose the potential risks and nuances of these properties to their clients.



Upcoming Seminars & Webinars

TODAY! Vermont Bar Association's Real Estate Law Week: Short Term Rents

Jill Spinelli Quong, Stewart's Vermont State Counsel will be presenting at a seminar **TODAY, May 8, 2024 from 10:00-11:00 am** as part of the VBA's Real Estate Law Week on the topic of Short Term Rentals (acquisition and conversion). You can register [Short Term Rentals Seminar Registration](#) if you're interested in joining on-line. CLE Credit of 1 hour is awarded to participants.

NELTA Lunch and Learn Series: Problems with Private Ways

On May 29, 2024, NELTA will host a 1 hour webinar on Private Ways. This webinar is free to members of NELTA and \$50 for non-members. CLE credit will be available for CT, ME, NH, VT and RI. For more information and to register, follow this link: [2024 May Lunch and Learn Webinar](#)

ALTA Insights Webinar: Best Practices to Identify Phishing Emails

On June 12, 2024, from 1PM – 2PM ALTA will be hosting a free 1 hour webinar focused on phishing email. Phishing email is one way criminals attempt to garner sensitive information or data. Training and knowledge is one of the best security control that agents and firms can implement. To register for this webinar, follow the following link: [Register Today](#)



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