

Dear Stewart Partners,

We hope you all are enjoying the heat of summer here in New England. In this week's Midweek Update, we are providing you with a reminder that the inchoate Connecticut Estate Tax and Probate Fee liens can attach to property held in trust. We are also including information on New Hampshire's newly enacted Uniform Real Property Transfer on Death Act, including a link to Stewart's recently released bulletin. Finally, we continue with the next installment of our series on frequently requested commercial endorsements – this time on the ALTA 28 series dealing with easements and encroachments.



Inchoate Estate/Probate Fee Liens: Revocable vs. Irrevocable Trusts in Connecticut By: David M. Piechota, Esq., Underwriting Counsel, Connecticut

The Department of Revenue Services for the State of Connecticut considers that the real property remains in the name of individual owner(s) if the property is conveyed into a revocable trust. Therefore, clearing of the Estate Inchoate Tax lien and Probate lien is necessary for real property held in a revocable trust. Real property that is transferred into an irrevocable trust may be subject to the inchoate lien(s) if the real property was transferred into the trust for no consideration within three years prior to the date of death.

Like the federal special estate tax lien on which it is based, the lien provided for under the Connecticut Estate Tax statutes, Secs. 12-391 et seq., arises automatically at the moment of death in an amount equal to the entire amount of tax liability as ultimately determined. No prior assessment, demand or notice is required with respect to the lien. It is created by and commences at the death of the decedent. It is a secret lien at its inception and may remain so, as there is no statutory requirement to record a notice of the lien. The lien secures not only the amount of tax determined to be due, but also all interest and penalties that accrue for failure to file the tax return within the statutorily required time period and pay the tax due. See Sec. 12-392. (CT Standard of Title 23.2, Comment 1)

The Connecticut Estate Tax applies to both residents' estates under Sec. 12-391(d)(3), and nonresidents' estates under Sec. 12-391(e)(2), to the extent that the nonresidents died owning real property **or any interest in real property** and/or tangible personal property situated in the state. Section 12-391(c)(3) defines "Gross estate" to mean the gross estate for federal estate tax purposes, as set forth in 26 USC Chapter 11. **It includes such often overlooked interests as transfers made for no consideration within three years prior to the date of death (26 USC Sec. 2035)**, retained life uses (26 USC Sec. 2036), revocable transfers such as those made to the trustee of a revocable trust or to the

revocable trust or those subject to a retained power of appointment (26 USC Sec. 2038) and transfers effective at death (26 USC Sec. 2037). Real property that is affected by any one of these interests is subject to the inchoate lien for estate taxes in the same manner as if the decedent had died owning it, and therefore, the value of it must be included in the decedent's estate tax return even though the property may not be included in the estate inventory. For this reason, it is not possible to tell whether or not a decedent's estate is taxable merely by examining the inventory on file. (CT Standard of Title 23.2, Comment 1)

Given the possibility of inchoate tax and probate liens for property held in a revocable trust, care must be taken when insuring titles where property is or was previously held in trust. Specifically it may be necessary to add certain requirements in Schedule B of the title commitment or exceptions may need to be taken in a policy of title insurance in certain circumstances. Should you have any questions concerning what is necessary in order to insure property without exception, or what may be necessary to satisfy the liens, please reach out to your Connecticut underwriting counsel for guidance.



New Hampshire adopts the Uniform Real Property Transfer on Death Act (URPTODA) By: Michelle Radie-Coffin, Esq., Associate Senior Underwriting Counsel, NH State Manager

New Hampshire became the 20th state to enact URPTODA, which became effective on July 1, 2024. The act allows an owner of real property to designate a beneficiary to automatically receive the real property upon the owner's death without a probate proceeding. The real property passes by means of a recorded transfer on death (TOD) deed. During the owner's lifetime, the beneficiary of a TOD deed has no interest in the property and the owner retains full power to transfer or encumber the property or to revoke the deed.

The act has been codified under NH RSA Chapter 563-D and applies to a transfer on death deed made on or after July 1, 2024, by a transferor dying on or after July 1, 2024. The requirements of a transfer on death deed are set forth in 563-D:9 as shown below. In addition, the newly enacted law creates an optional form for both a transfer on death deed and a revocation of a transfer on death deed. 563-D:19, 563-D:20.

563-D:9 Requirements. A transfer on death deed is void unless it:

1. Meets the requirements set forth in RSA 477:3
2. Bears the title 'Transfer on Death Deed';
3. States that the transfer to the designated beneficiary is to occur at the transferor's death; and
4. Is recorded:

(a) Prior to the transferor's death;

(b) Within 60 days following the date of execution; and

(c) At length in the registry of deeds for the county or counties in which the real estate lies.

If the requirements of a TOD deed are met and there is no valid recorded revocation, then upon the death of the transferor a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, other interests to which the property is subject at the transferor's death, and claims of creditors of the estate of the transferor as provided in RSA 563-D:16. Given that there is a time period that must pass for both claims made by creditors and a time period to contest the validity of a TOD deed, you as a title agent will need to add certain requirements and exceptions to your title commitments and, if necessary, to final title policies in transactions involving TOD deeds.

Here is a link to the recently issued bulletin and a link to the Act:

[Bulletin: UNDERWRITING - Transfer on Death Deeds](#)

[Uniform Real Property Transfer on Death Act](#)



The ALTA 28 Endorsement Series – Easements and Encroachments

There are four different ALTA 28 endorsements, and they all can be issued with both loan and owner's policies.

While they are all in the ALTA 28 series, the ALTA 28 differs from the 28.1, 28.2 and 28.3 endorsements. The ALTA 28-06 endorsement, entitled "Easement – Damage or Enforced Removal" provides coverage for loss or damage to an existing building or enforced removal or alteration of an existing building based upon an exercise of specific easement rights. The endorsement requires that you fill in the easements covered by reference to their exception number in Schedule B of the policy.

The 28.1, 28.2 and 28.3 endorsements provide encroachment coverage. The 28.1 endorsement, entitled "Encroachments – Boundaries and Easements," provides coverage for encroachments of buildings existing at the date of policy only. It does not apply to other structures such as fences, or buildings that are later constructed.

The 28.2 endorsement is named "Encroachments – Boundaries and Easements – Described Improvements." As the name suggests, in this endorsement the improvements are actually listed in the endorsement itself, and it can be useful if the title insurance company has agreed to provide coverage for a known encroachment. It essentially provides the same encroachment coverage as the 28.1, but it does not limit the coverage to buildings; instead, it covers the improvements listed in the endorsement.

Finally, there is the 28.3 "Encroachments – Boundaries and Easements – Land Under Development" endorsement. Like other "land under development" endorsements this endorsement requires that the plans showing proposed improvements be provided and identified in the endorsement. It significantly expands coverage over the 28.1 because included in the definition of "Improvement" in addition to a building is "a structure, or paved area, including any road, walkway, parking area, driveway or curb." It provides coverage for loss or damage if an existing improvement or a future improvement encroaches onto

adjoining land or an easement, and for forced removal or alteration of an existing or future improvement because of encroachment into an easement or onto adjoining land. It also provides coverage for loss or damage because an existing improvement from adjoining land encroaches onto the insured locus.

The ALTA 28 endorsements are part of the series of survey related endorsements, and often a full ALTA survey is required to issue these endorsements. Also note that if the property being insured is used for energy production (such as a solar array), the ALTA 36.6 endorsement should be used instead of the 28.1 since it has been customized for energy deals.

The text of these endorsements, along with the underwriting guidelines for each, can be found on Stewart's Virtual Underwriter website, and links are provided below. As always, if you have any questions regarding whether one of the ALTA 28 series of endorsements can be issued with a policy, please reach out to your Stewart underwriting counsel.

[ALTA 28](#)

[ALTA 28.1](#)

[ALTA 28.2](#)

[ALTA 28.3](#)



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