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NJ N2K Hour: Case Roundup

Cases affecting Tax Sale Foreclosures, Easements, and Restrictions

Presented By: Roberto Ditaranto, Esq. – NJ Underwriting

Tuesday, July 8, 2025

Tyler v. Hennepin County

- In a unanimous opinion, the U.S. Supreme Court in ***Tyler v. Hennepin County*, 598 U.S. 631 (2023)**, held that local governments seeking forfeiture of property as compensation for a public debt may not profit from it beyond the amount a person owes.

- Geraldine Tyler was a 94-year-old woman who owned a one-bedroom condominium in Hennepin County, Minnesota, which she lived in for ten years before relocating to a senior community living facility in 2010.

- Tyler had ceased payment of property taxes on the condominium, and by 2015 had accumulated a tax debt of $15,000.

- In order to satisfy the debt, Hennepin County foreclosed on Tyler's property, selling it for $40,000.

- The county used the proceeds to extinguish the existing $15,000 debt but also kept the $25,000 net proceeds from the sale.

Tyler v. Hennepin County (cont.)

- Tyler filed a putative class action against Hennepin County arguing that the County had unconstitutionally retained the excess value of her home above her tax debt in violation of the Takings Clause of the Fifth Amendment and the Excessive Fines Clause of the Eighth Amendment.
- The United States District Court for the District of Minnesota dismissed Tyler's suit for failure to state a claim, and the Eighth Circuit Court of Appeals affirmed.
- The Supreme Court of the United States granted certiorari and a unanimous bench reversed in favor of Tyler.
- Under the Minnesota law, an owner forfeits the property interest in their home when they are delinquent on their property taxes.
- Accordingly, the State argued, Tyler's tax payment delinquency stripped her of her property right, and therefore she had no interest protected by the Takings Clause.

Tyler v. Hennepin County (cont.)

- The Supreme Court ruled that Minnesota's practice of allowing Hennepin County to retain the surplus from tax-forfeited property sales, after the homeowner's debt was satisfied, violated the Fifth Amendment's Takings Clause.
- The Court's decision in this case established that this practice constituted an unconstitutional taking without just compensation, and consequently, the county was not entitled to keep the excess $25,000.
- While the Minnesota process is different than the NJ In Rem Foreclosure process, the similarities are the potential loss of equity by the homeowner, and the retention of surplus funds by the municipality.
- This decision ultimately affects both in personam and in rem tax sale foreclosures, which prompted the NJ Supreme Court to issue an order shortly after the decision stating that In Rem tax foreclosure actions filed after May 25, 2023, would require a motion for final judgment made to the county Superior Court judge, rather than having the entry of final judgment handled by the Foreclosure Unit.

257-261 20th Avenue Realty, LLC v. Roberto

- The State of New Jersey further built off the Tyler decision with its own recent case, ***257-261 20th Avenue Realty, LLC v. Roberto*** **(App. Div. 2023).**
- Defendant Alessandro Roberto bought a property in Paterson in 1997.
- In 2022, a realtor estimated the property could be listed for up to $535,000.
- Roberto failed to pay three sewer tax bills on the property totaling $606.
- The City of Paterson placed tax liens on the property for that amount, and plaintiff 257-261 20th Avenue Realty, LLC, bought the corresponding tax sale certificates at public auction.
- Years later, plaintiff filed a tax foreclosure complaint.
- The trial court set the amount of redemption at $32,973.15.

257-261 20th Avenue Realty, LLC v. Roberto (cont.)

- Roberto did not answer the complaint or pay the redemption amount, and the court entered a judgment in plaintiff's favor.
- Within two months of the final judgment, Roberto moved to permit redemption under Rule 4:50-1, arguing that he had posted $50,000 in escrow to redeem the property; that he had invested about $200,000 in improvements to the property since its purchase; and that, at age seventy-five, the "property was crucial to his retirement because it had over several hundred thousand dollars in equity" beyond the amount of past taxes owed.
- The trial court ultimately vacated the judgment under Rule 4:50-1(f), which allows for judgments to be set aside in exceptional circumstances.
- The plaintiff appealed, but while the appeal was pending, the Supreme Court decided ***Tyler v. Hennepin County*, 598 U.S. 631 (2023)**, holding that a homeowner faced with forfeiture of the surplus equity in her home under Minnesota's tax foreclosure law had plausibly alleged a taking in violation of the Fifth Amendment.

257-261 20th Avenue Realty, LLC v. Roberto (cont.)

- In the Roberto case, the NJ Appellate Court also ruled similarly as the U.S. Supreme Court that the taking of the excess equity was unconstitutional.
- It also stated that the Tyler decision had “pipeline retroactivity” and applied to cases where a final judgment had not been rendered at the time Tyler was decided.
- Finally, the NJ Appellate Court also addressed the applicability of a motion under New Jersey Court Rule 4:50-1(f).
- The court ruled that the taking of the equity was an abuse of discretion and effectively stated that this rule may apply indefinitely.
- However, this case was further appealed and decided by the NJ Supreme Court on January 9, 2025.

257-261 20th Avenue Realty, LLC v. Roberto (cont.)

- The New Jersey Supreme Court unanimously ruled in the case of ***257-261 20th Avenue Realty, LLC v. Roberto*, No.A-29-23 (N.J. Jan.9, 2025)** that the State's pre-2024 version of the Tax Sale Law was unconstitutional insofar as it permitted the forfeiture of a property owner's surplus equity without just compensation.
- The court's decision affirmed the lower court's judgment that Roberto should not be deprived of his property rights based upon an uncompensated taking in a tax foreclosure proceeding.
- Unlike the NJ Appellate Division's decision in Roberto, the NJ Supreme Court did not address the issue of pipeline retroactivity. The NJ Supreme Court limited its decision to the specifics of Roberto and did not make broader rulings.
- Therefore, lienholders are entitled to recover debts they are owed; the value of tax sale certificates they purchased at public auction along with interest and related costs, but they are not entitled to surplus equity in property that exceeds that amount.

Right of Redemption in NJ

- The State of New Jersey has also enacted the following bill, A3772, P.L.2024, c.39., which revises the process for tax lien holders to foreclose the right to redeem a property tax lien.
- This statute now conforms New Jersey tax sales law to the U.S. Supreme Court decision of ***Tyler v. Hennepin County*** which bars any state or local government from keeping home equity in excess of a taxpayer's debts and ensures that municipalities can still foreclose on delinquent properties in accordance with the Supreme Court decision.
- The statute also allows the property owner or the owner's heirs to request that the foreclosure proceed through a judicial sale or internet auction through the county sheriff's office in order to preserve any equity in the property, except for properties that meet the definition of "abandoned property."
- Property owners are not allowed to reclaim surplus equity on abandoned properties.

Right of Redemption in NJ (cont.)

- Specifically, for in rem tax sale actions, in order to preserve any equity that may exist in the property being foreclosed, the owner, or the owner's heirs, shall have the right to demand, by written request to the Superior Court before the date that the final judgment is entered, that the holder of the tax sale certificate foreclose the right to redeem that certificate in the same manner as a mortgage foreclosure, through a judicial sale of the property through the office of the county sheriff, or in the alternative, through an internet auction of the property through the office of the county sheriff.
- At least 30 days prior to the filing of a complaint, the holder of a tax sale certificate shall send all parties having a right to redeem a notice of intention to file a complaint.
- Furthermore, the law provides that notice of foreclosure to a homeowner through publication in a newspaper shall be conspicuously stated in boldface type that the owner and the owner's heirs shall have the right to demand a judicial sale, or an internet auction through the office of the county sheriff, of the property subject to the tax lien foreclosure to preserve any equity that they may have in the property.

Right of Redemption in NJ (cont.)

- The law also provides for the reimbursement of additional expenses if a homeowner or the homeowner’s heirs do not request an auction until after a tax sale certificate holder moves to foreclose on a property.
- Once the property is sold, the homeowner would receive their remaining equity, less their debt and costs for the county sheriff’s office that administered the sale and the tax sale certificate holder.
- If the owner or the owner's heirs do not demand a judicial sale, or an internet auction, the owner of the tax sale certificate may foreclose without a judicial sale or an internet auction, and the owner and the owner's heirs shall have no claim against the holder of the tax sale certificate for any equity in the property.

Underwriting Practices

- These recent developments have caused our underwriting considerations for insuring title out of a tax sale foreclosure to be modified, at least until further notice. Effective immediately, all agents must include the following exception:

  Consequences of the exercise of the right of redemption for a period of three months from the recording of the final judgment in the office of the county recording officer, pursuant to N.J.S.A. 54:5-104.67, or reopening or vacating of the final judgment pursuant to N.J. Ct. R. 4:50.

- Please note that this is a change from historical underwriting practices that only excepted for a reopening or vacating of the final judgment pursuant to Rule 4:50 for only one year.

- Until further notice, you must include the exception without the “one year” language.

- Please consult your underwriter for further guidance regarding any transaction where title is derived from a tax sale foreclosure to determine insurability.

Restrictions and Easements

771 Allison Court LLC v. Sirianni

- Nick Sirianni (**yes, the Philadelphia Eagles head coach**) and his wife signed a contract to purchase a home on Feb. 6, 2021.
- Just before the March 31st closing date, the title search showed the home's deed included a right of first refusal.
- A previous owner, Harvey Berk, put that provision in the deed in 2010.
- It gave Berk's son and daughter, as well as a family trust, the right to match a buyer's offer "for any future conveyance" of the home.
- In 2019, Berk sold the Property to a developer, Jeffrey Schneider, for $760,000. Schneider then formed Allison Court LLC ("Allison Court") and spent $1 million in renovations on the Property so the property could be sold as a "luxury home."

771 Allison Court LLC v. Sirianni (cont.)

- However, during this transaction, Schneider learned of the ROFR and that it created “difficulties” in selling the Property.
- Instead of extinguishing the ROFR, Schneider simply acknowledged in his sales contract that he was aware of it.
- The problem with the ROFR then arose with the Siriannis when the seller entered into a contract with them to sell the home.
- The seller did not give notice of the sale to Berk’s children or make them an offer on the Property, nor did it disclose the ROFR to the Siriannis.
- When the ROFR was disclosed in a title search, the Siriannis demanded its removal from the deed before closing.
- In response, the seller was able to obtain a signed waiver from Berk’s children.

771 Allison Court LLC v. Sirianni (cont.)

- However, the seller was unable to obtain a full release of the ROFR, and the Siriannis refused to close on the property.
- Four months later, Allison Court sold the Property to another purchaser after disclosing the ROFR for $1,950,000.
- The seller still filed a single count complaint alleging breach of contract against the Siriannis for their failure to close on the Property and for the termination of the Contract.
- On January 6, 2023, the motion judge granted the Siriannis' cross-motion for summary judgment, holding that the ROFR constituted a restriction on the alienability of the Property.
- The trial court held first that the seller had an obligation to disclose the ROFR before entering into the Contract and could not convey marketable title "free and clear from the rights of others."

771 Allison Court LLC v. Sirianni (cont.)

- On appeal, the Appellate Division affirmed the lower court's grant of summary judgment in the Siriannis' favor, reasoning that unambiguous contracts are enforced as written. ***771 Allison Court LLC v. Sirianni*, No. A-1566-22, 2024 N.J. Super. Nupur. LEXIS 897 (N.J. App. Div. May 17, 2024)**

- Like the trial judge, the Court found that: (1) Section 11's express terms required that Allison Court convey property that would be free from "all claims or rights of others" at the time of closing and (2) a right of first refusal restricts the right of a seller to "dispose freely of [the] property by compelling [the seller] to offer it first to the party who had the first right to buy."

- The ROFR impacted any future conveyance of the Property until the death of Berk's children.

- Furthermore, since Allison Court did not provide notice to Berk's children of the intention to sell the Property and did not obtain a release of the ROFR, the seller was thus unable to deliver good, marketable, and insurable title, and the Siriannis were relieved of their obligation to purchase the property.

Marketability v. Insurability

- The most significant aspect of this case is the fact that the availability of title insurance coverage at a higher cost did not change the indisputable fact that title was unmarketable because of the existing ROFR.
- Title companies do not insure marketable title to a property.
- Marketable title is a title that is free from reasonable doubt about its validity and ownership, meaning a reasonably prudent purchaser would accept it without hesitation.
- Insurable title, on the other hand, is a title that a title insurance company is willing to insure, even if it might have some minor defects or encumbrances.
- A right of first refusal is a restriction on the alienability of property, rendering a contract requiring marketable title void.

New Jersey Realtors v. Township of Berkeley

- In the case of *New Jersey Realtors v. Township of Berkeley*, the Superior Court of New Jersey, Appellate Division, invalidated a municipal ordinance that restricted property ownership in certain senior housing communities to individuals aged fifty-five or older.
- The dispute arose when Berkeley Township enacted Ordinance No. 22-13-OA (the Ordinance), amending its land use provisions to mandate that ownership in specific senior housing communities be limited to those aged fifty-five or older.
- New Jersey Realtors (NJR) challenged the Ordinance, claiming it violated the federal Fair Housing Act (FHA) and the NJ Law Against Discrimination (NJLAD) by discriminating based on familial status and failing to comport with the exemption for age-restricted housing.
- NJR argued that the FHA and the NJLAD only require that age-restricted housing be occupied by an individual fifty-five or older.

New Jersey Realtors v. Township of Berkeley (cont.)

- The Court ruled that the ordinance violated and was preempted by both the federal Fair Housing Act (FHA) and the New Jersey Law Against Discrimination (NJLAD).
- The Court also held that the requirement was arbitrary, capricious and unreasonable because it improperly infringed on the well-established and constitutionally protected right to own and sell property.
- Both the FHA and the NJLAD include a “housing for older persons” exemption to discrimination against families that allows age-restricted communities where 80% of the units have at least one resident who is 55 or older.
- However, there is no exemption in either law for age-restricted communities to require that owners be 55 or older, so the court rejected the Township’s position.
- The Appellate Division made it clear that any future ordinance related to familial discrimination cannot restrict ownership of property, only occupancy.

Cherry v. Ziad Hadaya

- In a recent NJ Appellate Division case (unpublished opinion), the court affirmed summary judgment for plaintiffs who sought to enforce deed restrictions to prevent a neighbor from subdividing their property, even though the restrictions were not included in the deed to defendants.

- The defendants (Hadaya) in this case owned a plot of land on Jefferson Road in Princeton that was originally part of a larger parcel conveyed in 1928.

- The 1928 deed contained some restrictions on the land conveyed including in pertinent part that: (1) frontage on Jefferson Road could not be subdivided into lots less than 100 feet wide by 200 feet deep; (2) frontage on adjoining Cuyler Road may not be subdivided into lots of less than 75 feet; and (3) frontage on Chestnut Street may not be subdivided into lots which are less than 50 feet wide.

Cherry v. Ziad Hadaya (cont.)

- While the 1928 deed contained restrictions on the land regarding subdivision, the 2004 deed did not.
- The defendants then received approval from the Planning Board in 2008 to subdivide its property into two lots and later applied to subdivide the larger resulting lot into two more lots without consideration of the 1928 deed.
- The plaintiffs, who owned the neighboring properties, filed a complaint seeking to void the 2008 subdivision and to enjoin further subdivision based on the 1928 deed restrictions relating primarily to the frontage of the lots.
- The Chancery Court dismissed some neighbors' claims for lack of standing as they were not in the chain of title of the 1928 deed.

Cherry v. Ziad Hadaya (cont.)

- However, the court granted summary judgment for the other plaintiffs whose properties were within the 1928 deed chain of title and ordered the Defendants to re-convey the plots back to their 2004 dimensions.
- On appeal, the Appellate Division affirmed, agreeing that enforcement of the 1928 deed restrictions was reasonable, and that plaintiffs in the chain of title were among those intended to be incorporated into the neighborhood scheme.
- The Appellate Division agreed with the trial court on all counts, agreeing that defendants' arguments as to the lot width requirements were strained and counter to the plain words of the 1928 deed; that the frontage limits are a key component of the character of a residential neighborhood; and that plaintiffs were among those intended to be incorporated into the neighborhood scheme.

Rasulova v. Aguila

- In the case of ***Rasulova v. Aguila*, BER-C-39-21, (N.J. Super. Ct. Ch. Div. 2021)**, the NJ Superior Court held that an easement for ingress and egress granted from one property to another can be modified to allow for parking since the intent of the grantor and the Township's parking ordinances dictated as such.

- In June and August of 2000, Jonathan and Marisa Lesko purchased 116 and 118 Grove Street in Mahwah, New Jersey, also known as Lots 57, 58, 59, and 60.

- A driveway (the "cutout lot"), which was previously a public road and had been conveyed in part by the Township to the owners of Lots 57 and 58, adjoined those lots.

- The Leskos then subdivided the lots into two residential homes, and due to the location of the lots, 116 Grove Street had two driveways, a large driveway in front of the house and then the cutout lot, while 118 Grove Street had no driveway nor access to Grove Street.

Rasulova v. Aguila (cont.)

- The Township of Mahwah has ordinances which prohibit off street parking and require residential dwellings to have at least two available parking spots.

- In 2005, the Leskos then granted as the owners of Lots 57 and 58 an easement for the cutout lot area in favor of Lots 59 and 60 for ingress and egress.

- After the Leskos completed a subdivision of these lots, 116 and 118 Grove Streets were then subsequently conveyed and eventually acquired (separately) by the Plaintiff (the 116 Grove owner) and the Defendant (the 118 Grove owner) in this case.

- Since November 2013, the Defendant had been consistently parking on that easement area.

Rasulova v. Aguila (cont.)

- However, in 2020, the plaintiff expressed a need to use that easement area to access a parking lot that is located next to the easement area, which was often blocked off since the defendant was parked in the cutout lot.

- The plaintiff then brought suit against the defendant, seeking relief preventing the defendant from parking in the easement area.

- The Court found that any burden or inconvenience incurred by the plaintiff in having to move or rearrange cars when the defendant used the cutout lot was not sufficient to find that the defendant is not entitled to use the easement.

- The Court also ruled that the plaintiff, or any subsequent property owner, is prohibited from blocking ingress, egress, or parking of at least two vehicles belonging to or authorized by the defendant, or any subsequent owner of 118 Grove Street, within the easement area.

Torpey v. Kerrigan

- In the case of ***Torpey v. Kerrigan*, No. A-1922-21 (N.J. App. Div. Oct. 30, 2023)**, plaintiff and his wife purchased property located at 1412 Bryant Avenue, Toms River in 1969.

- Their friends, Gilbert and Doris Wilson(the Wilsons), owned the lot and home adjacent to the small corner lot at issue, and according to the Tax Map of the Township of Dover, the corner lot was identified as Block 720-9, Lots 358 and 359.

- Since the 1970s, plaintiff and his family have used one-half of the corner lot as a parking area for their cars and boats.

- In 1978, the owner of the corner lot listed that property for sale, and plaintiff, his wife, and the Wilsons purchased it with the couples each owning a one-half interest in common and the spouses having a tenancy by the entirety.

Torpey v. Kerrigan (cont.)

- In 1999, Doris Wilson sought to sell the Wilson property following her husband's death, and she had asked the plaintiff to deed over his and his wife's one-half share of the corner lot so she could consolidate her property and the corner lot to make it more attractive to potential buyers.

- The Torpeys did a deed to Doris Wilson reserving unto themselves an easement in perpetuity for the use of the southern half of the property, measuring 50 by 60 feet, to use the easement area for access and for light and air.

- In June 2000, Doris Wilson sold the combined property, including the corner lot, to Frank and Karen Killian(the Killians), who then later sold the property to the defendant.

- The Killians were made aware of the easement, and the plaintiff continuously used the easement area during this time to "park cars and multiple boats "and "kept the easement area neat and groomed.“

Torpey v. Kerrigan (cont.)

- Kerrigan allegedly “then moved in and removed the fence” demarcating the easement area and eventually permitted her tenants to park cars on the entire corner lot.

- The plaintiff filed an action to quiet title and for enforcement of the easement in the 1999 deed.

- The appellate court held that the trial court erroneously relied upon outdated common law in finding that absent words of succession, including "heir," the easement would last only for the lifetime of the plaintiff and his wife, and reversed the portion of the trial court’s decision finding the duration of the easement limited to the lifetimes of the plaintiff and his wife.

- The appellate court ordered entry of a judgment permitting the plaintiff and his children to use the easement until they no longer owned the Toms River property.

Adverse Possession Cases

- ***Shea v. Lydon -*** Defendant lived in Edgewater for approximately forty-six years and testified that the garage on his property was erected in 1972 or 1973.

- In 2016, plaintiffs, in preparation for demolition of their existing garage and construction of a new one, secured a new survey, and the survey revealed an encroachment on plaintiffs' property in the form of a detached garage structure located at the rear of defendant's property.

- The defendant did not become aware of the encroachment of the garage onto the adjoining property until August 2016.

- The trial court ordered alternative relief, making demolition of the garage expressly contingent upon the outcome of a separate Law Division action filed by plaintiffs, and the appellate court affirmed the trial court’s ruling.

Adverse Possession Cases (cont.)

- ***Cozy Cove Marina, Inc. v. Nelson Properties Partnership*** **–** Court held that the thirty-year statute of limitations expired prior to Nelson instituting the present action.

- Cozy Cove bought the property for the marina from the Borough in 1972. It continually possessed the property thereafter.

- Nelson's transmittal of a letter to Cozy Cove did not toll the statute of limitations.

- Only a proper action for ejectment would do so, and Nelson did not file the action for ejectment until October of 2022.

- Therefore, the thirty-year period had expired.

Adverse Possession Cases (cont.)

- ***Wu v. Gesualdo*** - From 1966 to 2019, plaintiffs and their predecessors maintained a post-and-rail fence at the rear of their yard.

- An August 2011 survey obtained by plaintiffs revealed that the fence jutted into defendants' property about twenty-five feet at one point and twenty feet at another.

- Gesualdo completely removed the post-and-rail fence and erected a stockade fence along the property line defined by the parties' surveys.

- The Appellate Division affirmed the trial court's ruling that plaintiffs failed to sustain their burden of proving "adverseness or an open and notorious possession," and held that the erection of a fence as a general matter should not be the means of setting "a trap for the unwary non-trespassing landowner" or the cause of "creating more neighbor and title disputes" than it solves.

Adverse Possession Cases (cont.)

- ***Leonard v. Pantich*** – Plaintiff purchased the property in 2006 and obtained a survey.

- The survey noted a fence line along the property with a portion of defendant's wire mesh fence located in the rear of the lot.

- The trial court ordered the defendant to remove the fence constructed on the rear of the property and an approximate three-foot portion of a stone driveway that encroached on the front portion of the property, denied plaintiff's claim for money damages and counsel fees, and dismissed defendant's counterclaims sounding in adverse possession and prescriptive easement.

- The appellate court affirmed the decision.

Conclusion and Wrap-Up

- Recent developments in tax sale foreclosure law as a result of the ***Tyler v. Hennepin County*** and ***Roberto*** decisions have caused our underwriting considerations for insuring title out of a tax sale foreclosure to be modified, at least until further notice.

- Please always consult your underwriter for guidance before insuring title out of a tax sale foreclosure.

- A restriction on alienability such as a right of first refusal (ROFR) may prevent a seller from conveying marketable title to a purchaser, even if title is still considered insurable by a title company.

- Recent case law in NJ has shown that although restrictions on occupancy may be permissible in certain circumstances, a restriction on property ownership may be unenforceable.

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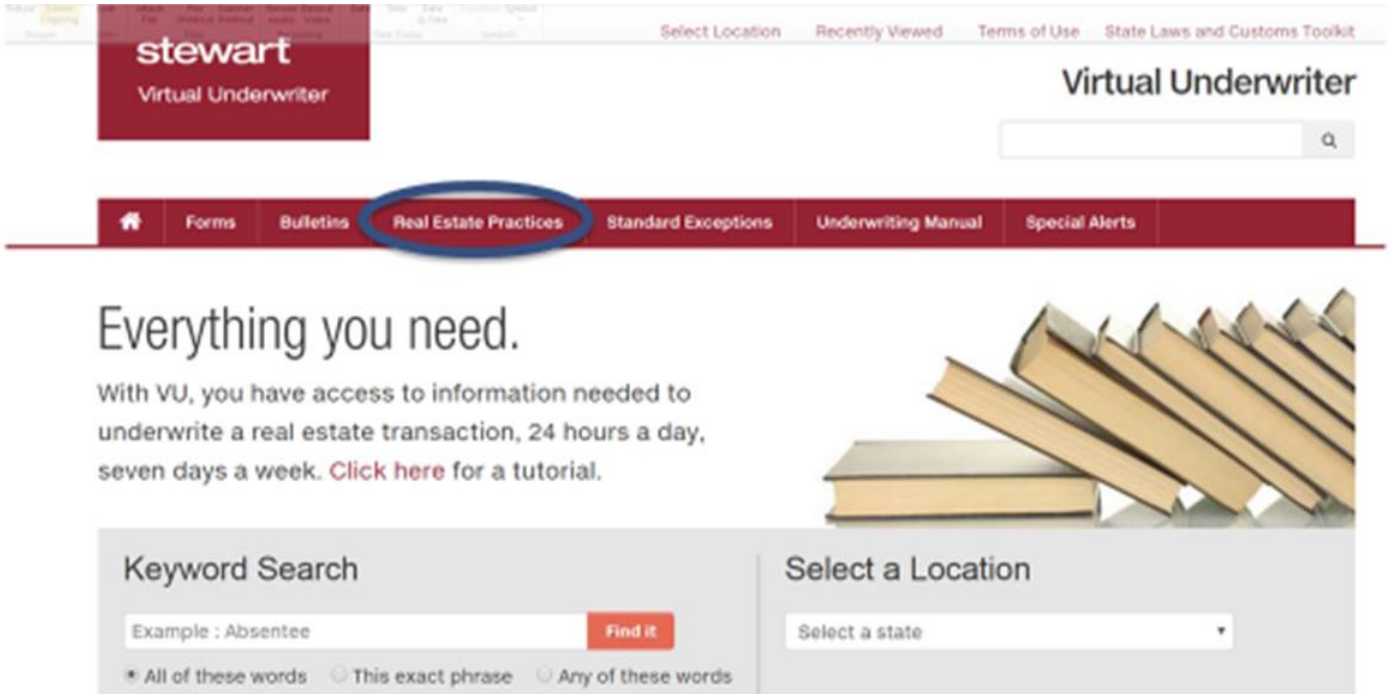

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August N2K HOUR

Title Scams

Tuesday

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11:00AM