New England Regional Midweek Update
12/3/2025

Dear Stewart Partners,

We hope everyone had a wonderful Thanksgiving holiday with plenty of family, friends, and feasts. As we head into the last month of 2025, this week's Mid-Week Update provides a summary of CT Standard of Title 29.1 regarding tax collector's deeds. Of general interest, we are also providing a refresher on the importance of closing out lines of credit as well as a brief update on FIRPTA.

As a reminder, next week, Tracie Kester will be presenting our December installment of our Massachusetts Underwriters Talk Title webinar series. The presentation will focus on Tenants by the Entirety and avoiding some common and not so common traps. You can find registration details below.

Connecticut Standards of Title 29.1 – Effect of Tax Collector's Deed Given Pursuant to Sale Occurring After July 6, 1995 By: David S. Veleber, Esq. Connecticut Underwriting Counsel

In my continuing discussions of Connecticut's Standards of Title, I wanted to talk about Standard 29.1 and the impact it has on titles derived through tax collector sales and the deeds that follow. We have been seeing an increase in tax collector sales over the past decade as municipalities seek ways to recoup delinquent taxes more quickly and with less expense than by traditional foreclosure. But, in following a tax sale process, there are risks that are not present in judicial foreclosures. The presence of a tax collector deed in the chain of title generates many calls and emails with questions on how to deal with them, especially when the tax collector's affidavit is not recorded on the land records. The statutory notice requirements of the new statutory scheme under CT Public Act 95-228 are extensive and complicated and need to be followed very closely. Those provisions for tax sales occurring after July 6, 1995 are outlined in Standard 29.1.

The Standard states:

1. **Title derived through a tax collector's deed given pursuant to a sale occurring after July 6, 1995 is marketable, provided that the tax collector complied with all of the notice and procedural requirements of Sec. 12-157, both before and after the sale, and provided further that if any certified mail notice was returned undelivered, the tax collector took other reasonably available steps to attempt to provide actual notice to that person.**

2. **Once the tax collector's deed has been of record for one year, marketability is not impaired because of the failure of the tax collector sale to have complied with the exact procedural requirements of Sec. 12-157. This provision of this Standard is based on the limitation period established by Sec. 12-159b; it does not apply, however, to any defect resulting from fraud or the failure of the tax collector to satisfy federal due process requirements by giving notice to any person entitled thereto, or to take reasonably available steps to attempt to provide actual notice to any person whose certified-mail notice was returned undelivered.**

3. **Such a deed conveys title to the grantee free and clear of (a) the taxes described in the notices of sale; (b) claims of any encumbrancers of record to whom the tax collector sent or otherwise gave the required notices; and (c) claims of persons acquiring an interest in the property after the tax collector caused the notice of sale to be recorded in the land records.**

4. **Title derived through a tax collector's deed issued pursuant to a tax sale commenced subsequent to the death of the record owner of the property is marketable only if (a) an estate was opened for the decedent in a court of competent jurisdiction, (b) there has been a judicial determination of heirs or devisees and (c) those parties have received the notice required by Sec. 12-157.**

Comment 1 of the Standard points out that tax collector sales that occurred prior to the effective date of P.A. 95-228 are discussed in Standard 29.2. Often, these older tax sales are not an issue because the tax collector's deeds have been of record for more than 20 years without any recorded claim or notice of dispute by a third party.

Comment 2 addresses one of the most common questions related to tax sales. It discusses the need to be able to review the tax collector's file to confirm that all statutory notice provisions were properly given. If a purchaser, within ninety days of the date of recording of the deed, requests the tax collector to prepare such an affidavit, Section 12-159 requires the tax collector to do so. The affidavit must comply with the requirements of Section 12-167a. Usually the affidavit is executed by the tax collector (or his agent) since the tax collector is the party with access to the several items that would be expected to be affixed to the affidavit. Unfortunately, the affidavit sometimes is not requested or recorded within this time frame, but it is still needed.

The recording of the affidavit (or lack thereof) is usually the source of most of the questions related to tax sales and the marketability and insurability of title derived through a tax sale. Although the Standard recognizes that the recording of an affidavit is not a necessary prerequisite for a marketable title, it goes on to say, "Absent such a recorded affidavit, however, the title examiner can establish marketability only by undertaking an independent review of all of the required notices." So, even if outside the statutory timeframe for the tax collector to be required to prepare the affidavit, they are usually still able and willing to provide one, assuming they have the information. But, if they refuse, as the Standard points out, a third party can undertake that effort by reviewing the file (and preparing and filing their own affidavit). Although outside the scope of the Standard, on the rare occasion that an affidavit cannot be prepared or it is determined a party was missed in the tax sale, a quiet title action may be an option to properly vest title in the current owner.

Comment 3 discusses notice requirements and the impacts of Jones v. Flowers, 126 S. Ct. 1708 (2006). This Standard adopts the rule, therefore, that if the title examiner discovers that any of the required certified notices were returned as unclaimed or undeliverable (and that the other certified mailings to that party were also so returned), the title examiner must also determine if the tax collector took other reasonably available measures to attempt to provide alternative notice to such person or persons (in addition to the publication notice), including verification from the available public records of the then current proper address of the person entitled to notice.

Comment 4 outlines the limitation to challenge the tax collector's deed. The statute of limitations with respect to challenging defects in tax collector sales under C.G.S. Section 12-159b, on any grounds other than fraud, is one year from the date the collector's deed was recorded. The Standard aligns with that, provided that the title examiner has also determined that the constitutional due process notice requirements were satisfied.

Comment 5 discusses that C.G.S. Section 12-159 states that a tax collector's deed "shall be prima facie evidence of a valid title in the grantee to the premises therein purported to be conveyed, encumbered only by the lien of taxes to the municipality which were not yet due and payable on the date notice of levy was first made, easements and similar interests appurtenant to other property not thereby conveyed, and other interests described therein and of the existence and regularity of all votes and acts necessary to the validity of the tax therein referred to. . ." The recorded notice of tax sale takes on the characteristics of a notice of lis pendens in a foreclosure action, particularly with respect to freeing the tax collector of the need to provide any of the other notices. This permits the title examiner to pass title without taking exception for the post-notice interests, and without requiring releases thereof or making further inquiry of any kind.

Comment 6 points out that a person whose primary duty is to pay the taxes cannot bid at the auction. Comment 7 addresses a potential conflict with C.G.S. Section 12-157. Notwithstanding language in C.G.S. Section 12-157 to the contrary, the remedy of a tax collector sale appears not to be available in those situations wherein the land records disclose that the owner is deceased at the time of commencement of the tax sale proceedings. However, there is an exception where the identity of the heirs or devisees can be reliably established by an estate that has been opened in a Connecticut probate court, or, if the decedent died resident in another state, a court of competent jurisdiction in that state has made a judicial determination of heirs or devisees and proper notice is given to the heirs or devisees.

Although this article focuses on Standard 29.1, please also see a prior New England Regional Midweek article entitled "Connecticut Tax Auction Sales" in the May 8, 2024, edition for a more detailed outline of the tax sale process. New England Regional Midweek Update

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.

Line of Credit Mortgages: Remember to Close Out the Loan Before Pay Off! By: Katherine F. Fletcher, Esq., Connecticut State Counsel and Associate Senior Underwriting Counsel

We are all familiar with line of credit mortgages which can be labeled in a variety of ways, such as "Home Equity Loans", "Equity Secure Accounts," "Home Equity Lines of Credit," "Credit Line Mortgages," "Revolving Credit Mortgages," or "HELOCs." Generally, a line of credit is secured by a mortgage on real property. Unlike a traditional mortgage loan, the terms of a line of credit typically permit funds to be borrowed, repaid in whole or in part, and then borrowed again. Each draw from a line of credit has the same priority as the initial draw. Unfortunately, lines of credit can be a common source of claims for our industry if they are not closed out and discharged properly.

The line of credit risk arises because the underlying line of credit may not automatically terminate upon the payoff of the outstanding balance. While the payoff of the outstanding balance results in a zero balance, the line of credit remains active. If the line of credit is not irrevocably terminated, the borrower can still draw on the line of credit after the closing. Therefore, subsequent advances may enjoy lien priority superior to a newly insured mortgage.

Often, a borrower may not realize a line of credit has a corresponding mortgage or that a zero balance does not close the line of credit. Further, a borrower may not have ever used the line of credit, so they have no information about it. If no monthly payment is due, there may be no monthly statement delivered by the lender. Also, line of credit loans often provide for alternative methods of obtaining advances, including checkbooks, electronic transfers, and debit cards. However, only collecting the line of credit checkbook or debit card associated with the account, or requiring that they be returned to the existing lender, is not sufficient to close the line of credit.

With the foregoing in mind, typically more than a payoff of the outstanding balance of the loan is needed to discharge line of credit mortgages. The line of credit needs to be closed, and a discharge must be obtained and recorded. If available, the best protection against an advance being made after the closing is receipt of confirmation from the existing lender, prior to the closing, that the line of credit account is closed, together with an undertaking by the lender to deliver a satisfaction of mortgage upon payment of the outstanding balance.

Here are a few important tips to follow to make sure lines of credit are properly closed and discharged:

1. Obtain a current payoff of the line of credit and follow the instructions carefully.

2. Provide a signed authorization from the borrower to the lender instructing the lender to close out the account (and retain the letter as part of the closing file in case the request to close the line of credit is ever questioned). If the mortgage specifies a procedure to cancel the advances, require compliance by the borrower. Otherwise, suggest that the borrower use the "STG Request to Cancel Revolving Credit Loan," which includes a payoff request. If more than one person can draw on the loan, all borrowers must request cancellation of the line of credit. The STG Request to Cancel

is available on Virtual Underwriter and can be accessed here: STG Request to Cancel Revolving Credit Loan.

3. The following REQUIREMENT should be placed in any commitment when the title search discloses that the property is encumbered by a line of credit: *Mortgage from _____ to _____ recorded _____, securing a note in the original principal sum of $_____, and other obligations described therein. This mortgage secures an equity line loan. Prior to the final payoff, the Company requires a satisfactory written statement from the beneficiary that the account has been closed or frozen and, if applicable, satisfactory documentation from the borrower to close or freeze the account and/or a satisfactory full release for review and for recording concurrent with the payoff.*

4. To mitigate risk from a draw against the line after the payoff is received, you should obtain an affidavit and indemnity from the borrower at closing, wherein the borrower certifies no further draws were made against the line after the payoff was provided and further indemnifies against loss if additional funds are due. This affidavit is available on Virtual Underwriter and can be accessed here: Revolving Credit Loan and Personal Undertaking

Remember, the only way to confirm a line of credit has been paid off and closed is if a discharge is recorded. Given the risks associated with a line of credit, tracking a discharge in this situation is critical. For our Massachusetts agents, if the line of credit mortgage is secured by a 1-4 family residential property, it is possible to discharge by affidavit pursuant to 183, §55(g)(1), if notice is given to the lender pursuant to requirements set forth in that section.

For further information and tips regarding the closing and discharge of lines of credit, please see the following:

Massachusetts bulletin: Bulletin: MA2016001

National bulletins: Bulletin: SLS2008015 and Bulletin: MU000014

If you have any questions regarding the above, please contact a Stewart underwriter.

Update on FIRPTA and Electronic Payments

In the July 30, 2025, New England Midweek, we published an article regarding the requirement announced by the IRS mandating electronic payment of withholding under FIRPTA after September 30, 2025. Notwithstanding the original deadline of September 30, 2025, the IRS has continued to delay the implementation of that requirement until further notice. As such, please be aware that as of the date of this Midweek article, you may continue to make payments by paper check until further notice. See Upcoming Changes to Federal Payments pursuant to Executive Order 14247 – Bulletin: SLS2025009

Upcoming Webinar: Massachusetts Underwriters Talk Title – Tenancies by the Entirety - December 10, 2025

Please join Tracie Kester, Associate Senior Underwriting Counsel for Massachusetts, on Wednesday, December 10, 2025 at 11:00 AM for the next installment of our Talk Title Series. To register follow this link: Massachusetts Resources and Newsletters | Stewart.com

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