



New England Regional Midweek Update

11/1/2023

Dear Stewart Partners,

We hope all of you are enjoying the fall weather as we head into November with the Holiday Season and winter fast approaching.

In this week's update we are providing information on insuring title to co-op units in Connecticut and loan and mortgage modification agreements. We also are including information on the Massachusetts Real Estate Bar Association's fall conference with some details on an upcoming presentation to be given by Attorney Jutta Deeney, Stewart's New England Underwriting Counsel. Lastly, Stewart is co-sponsoring a "Meet & Greet" for REBA's Women's Networking Group at Craft Food Hall in Waltham on November 9, from 6PM - 8PM. The event is open to attorneys and other professionals in the real estate industry. To attend, please see the below for RSVP information.



Insuring Title to Co-Op Units in Connecticut

Although the Common Interest Ownership Act ("CIOA") provides for the existence of co-ops in Connecticut, they are a rare form of development, as opposed to condominiums, which are very common. A cooperative is defined as "a common interest community in which the real property is owned by an association, each of whose members is entitled by virtue of his ownership interest in the association to exclusive possession of a unit" (CGS 47-202 (12)).

Prior to the effective date of CIOA, January 1, 1984, there was no statutory basis for cooperatives in this state, and those that existed (and continue to exist without having opted in to CIOA) are based purely on common law contractual relationships. Section 47-204 (e) of CIOA provides that pre-1984 co-ops can record a certificate in the land records containing the information set forth in that statute in order to become a statutory cooperative. That information effectively establishes a chain of title for the units in such a development by setting forth identity of units, owners and association, encumbrances on units, status of common charges, definition of units, and other relevant matters. If such a certificate is filed, then title to units in the cooperative can be insured as a valid CIOA co-op. Prior to insuring, however, check with your Connecticut Stewart underwriting partner to confirm the validity of the statutory co-op and to determine if any special endorsements may be necessary. Prior to CIOA, cooperatives were treated primarily as personal property interests where proprietary leases were rarely recorded and no record chain of

title was created. The statutory authority provided by CIOA created a market for co-op unit mortgages and unit owners' title insurance by establishing the co-op unit as a real property interest and a statutory procedure for establishing the marketability of record title to units.

If a pre-CIOA co-op does not opt in to CIOA by filing such a certificate, units are occupied as leasehold interests only and can only be insured as such. In these instances, title into the entity owning the real property should be searched, along with the name of the unit occupant/seller and Stewart Title Guaranty Company should be contacted to determine if title to such a unit is in fact insurable as a leasehold interest. In such instances a proprietary lease must be entered into between the lessor/association and lessee/unit owner, notice of which should be on the land records. Often such leasehold interests are long-term and thus assigned as they are transferred. In such a case, the assignment of lease should be recorded to reflect the transfer on record. Alternatively, a new lease is entered into, in which case a notice of termination of any prior recorded lease should be filed, along with a new notice of lease signed by the association/lessor and the new buyer/lessee.

Additionally, ownership of both old and newer co-ops includes shares of stock in the association which are transferred along with the units. When such units are mortgaged, often the lenders may require a pledge of the stock and secure the pledges by filing UCC-1 Financing Statements with the Secretary of State. For this reason, it is advisable when representing a purchaser of a co-op unit that a UCC search be obtained in addition to a title search.

Under common law and under CIOA the Association owns all of the real property in fee and thus pays the real estate taxes. The unit owner/occupant pays a monthly fee that is used for payment of taxes and any underlying co-op mortgage encumbering the entire property, separate and apart from the owner's own unit mortgage.

The methods of conveying title to cooperative units vary among practitioners in that sometimes deeds are used and sometimes only lease assignments or new leases are used. CGS 47-204(3)(6) provides that a conveyance of a unit owner's interest is accomplished by delivery to the purchaser of an instrument, executed in the same manner as a deed, conveying all the seller's interest in the unit.

As always, please contact your Stewart underwriter should you have any questions or need assistance in a cooperative transaction.



Loan and Mortgage Modification Agreements – What You Need to Know

During the past few years, we have had a substantial increase in requests for endorsements to add mortgage modification agreements to existing lender policies. In many instances, the restructuring of a mortgage will result in the execution of a note and a mortgage modification agreement that will be recorded on the land records. The lender will

typically require an endorsement to its title insurance policy to ensure that the modification will not affect the priority or the validity of the mortgage.

A mortgage modification agreement may change an aspect of the original mortgage. Some typical reasons for modifying a mortgage include:

- To change the maturity date.
- To decrease or increase the interest rate.
- To change a fixed rate to a variable rate or a variable rate to a fixed rate.
- To increase the principal amount of the loan.
- To recharacterize delinquent interest, arrearages or fees as principal to cure a default.
- To lower the monthly payment.
- To correct errors made in the original mortgage.

Both the lender and the borrower must execute all mortgage modification agreements. The signatures of the parties should be witnessed and acknowledged in the same manner as a mortgage. Care must be taken that any modified terms comply with all applicable statutes. Appropriate granting language is required in the modification agreement if additional property is added as collateral.

Priority issues must be taken into consideration anytime there is a mortgage modification. The lender should always require a title search before agreeing to modify an existing mortgage. All changes in the record title during the update period must be reflected by amending the policy. There is a possibility that a subsequent encumbrancer may gain priority, in part, over a mortgage that is modified if it is not done properly. The lender should always require an endorsement to its title insurance policy because the standard loan policy takes exceptions for defects, liens or encumbrances attaching subsequent to the date of the policy.

A lender should concern itself with the status of title and its relative lien position in all modification transactions, which information would be disclosed in a title search completed prior to finalizing any modification. The search will also aid in determining the necessary requirements of the title insurer for the issuance of any requested endorsement to the existing policy. If you have any questions or concerns about mortgage modifications and endorsements, please contact your Stewart underwriting counsel.



Jutta Deeney, Stewart's New England Underwriting Counsel,
Presenting at REBA

Attorney Jutta Deeney, Stewart's New England Underwriting Counsel, will be presenting at the REBA Annual Meeting & Conference on November 6, 2023. The panelists at this Practical Skills Session will discuss divorces, guardianships, and conservatorships and their impact on real estate conveyancing. There are several other educational offerings at the conference, including a session on the updated ALTA Best Practices. For Rhode Island attorneys, the conference has been approved for 240 minutes of general credits or 60 minutes of ethics credits and 180 minutes of general credits. To learn more about the

conference or to register, you can visit the conference webpage here:

<https://reba.net/about-us/2023-reba-annual-meeting-and-conference/>



Join us at Craft Food Halls at 200 Fifth Avenue, Waltham, MA on November 9th at 6PM

Join members of the REBA Women Networking Group for libations and conversation at Craft Food Hall, in Waltham on Thursday, November 9, 2023 from 6PM – 9PM. This event is open to men and women alike who are members or potential members of REBA. The Women's Networking Group is an informal group, where members and non-lawyer professionals come together to network, collaborate and build professional and personal relationships. There will be a cash bar and light refreshments will be served.

To attend, please RSVP to Jaime.tammaro@stewart.com. Space is limited!



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