



Dear Stewart Partners,

In this week's update, we are providing you with some Stewart resources we hope you find useful, including a summary of Connecticut's controlling interest transfer tax and recent developments in Rhode Island's standards of title related to legal description defects.

As a reminder, our New England underwriting team is planning future educational webinars focusing on some back-to-basics skills on title commitment and title policy preparation so be sure to check future Mid-Week Updates for information and registration links for these webinars. For those of you who missed our two recent webinars on the newest ALTA owner and loan policies, the recorded webinars are available and can be viewed at your convenience. Credit for mandatory continuing legal education (MCLE) may be available in CT, NH, VT, and RI. To receive the recording, simply email your State Underwriter or your ASR and request a copy of the recorded webinar. For our Maine attorneys, we anticipate receiving program approval for the pre-recorded webinar in the future. We'll be sure to update you in a future Mid-Week update when approval is received.



Connecticut's Controlling Interest Transfer Tax

Those that have worked on transactions involving the sale of real property in Connecticut are familiar with real estate conveyance tax in Connecticut, both at the state and local level. After all, no deed (or easement) can be recorded in Connecticut without the submission of an OP-236 Conveyance Tax Return and payment of conveyance taxes (unless one of several exemptions applies). However, not everyone is familiar with Connecticut's Controlling Interest Transfer Tax (C.G.S. §12-638b).

In a transaction involving the transfer of membership interests, Controlling Interest Transfer Tax (CITT) may apply to the transfer of a "controlling interest" in an entity that "directly or indirectly" owns Connecticut real property with a value of \$2,000.00 or more. Since no forms need to be submitted, and no payment needs to be remitted, the CITT is sometimes overlooked.

Controlling interest means, in the case of a corporation, "more than fifty percent of the total combined voting power of all classes of stock of such corporation", or in the case of a noncorporate entity (such as a partnership, limited liability company, or trust), "more than fifty percent of the capital, profits or beneficial interest" in such entity. A transfer of a controlling interest may be made all at once or in a series of transfers. Transfers that would

amount to a transfer of a controlling interest if they had occurred at the same time will be treated as a transfer of a controlling interest. Transfers occurring within six months of each other are treated accordingly, unless otherwise shown to the contrary (to the satisfaction of DRS).

The transferor of the membership interest is responsible for paying the tax (and is referred to as the “taxpayer” in the pertinent statutes). The tax amount is presently 1.11 percent of the present true and actual value of the interest in real property. An additional CITT is imposed under Conn. Gen. Stat. §12-638I if a controlling interest in an entity which owns an interest in land that has been classified as farmland, forest land, maritime heritage land, or open space land is transferred within a period of ten years.

On or before the last day of the month following the month in which the sale or transfer of a controlling interest in an entity occurs, a Form AU-330 return must be filed with the Department of Revenue Services by the person conveying the controlling interest. Payment of the tax shall accompany such return. Returns are signed by the person required to file the return for such entity or by an authorized agent. A link to the AU-330 return is provided below.

CITT does not apply to the transfer of a controlling interest in any entity:

1. To the extent the entity owns directly or indirectly real property located in an enterprise zone (some towns/cities have these); or
2. If a transfer effectuates a mere change of identity or form of ownership or organization; not a change in beneficial ownership.

However, a Form AU-330 must be filed to claim one of these exemptions.

Any right the DRS has to lien real property is limited to real property owned by the taxpayer. With this in mind, since the taxpayer no longer has an interest in the property owned by the LLC upon the sale of the property, there are no lien issues from a title insurance perspective. No special CITT requirements are needed on the commitment and no special CITT exception is needed on policies.

The following link provides the AU-330 return and instructions:

[AU-330 Return and Instructions](#)

This is just a brief overview of CITT. There are many issues beyond the scope of this summary, including how “value” is determined. If you have a customer or client that is considering a transfer which might trigger CITT (as mentioned above, it can be triggered by a transfer of a controlling interest in an entity that directly or indirectly owns property), we suggest the client speak further with a CT attorney familiar with CITT or the Department of Revenue Services: 860-297-5962.



Rhode Island - Proposed NEW Title Standards by the RI Bar Association's Committee on Real Estate Title Standards and Practices

The Rhode Island Bar Association's Committee on Real Estate Title Standards and Practices has recently proposed new title standards regarding ineffective legal descriptions in deeds that should prove to help practitioners with sticky legal description defects. Proposed standards 3.19 and 8.2 have been approved by the Committee and await approval by the Executive Committee and Proposed standard 3.20 awaits its first approval by the Committee. Title standards approved by the Executive Committee are then submitted for publication in the Rhode Island Bar Journal and final approval.

Standard 3.19 entitled "Description by Reference to Assessor's Plat and Lot" sets forth that since a tax assessor's plat is not part of a city or town's land evidence records, and since the numbering of the plat and the lots shown thereon are subject to change at the discretion of the Tax Assessor, a parcel of land should not be described for conveyancing purposes solely by use of the parcel's current Assessor's plat and lot designation. There is an exception for a Collector's Deed resulting from a sale conducted by an entity holding a lien for unpaid taxes, water or sewer charges to describe the parcel sold at the sale and conveyed by that deed solely by reference to the parcel's Assessor's plat and lot designation.

This standard guides the practitioner prospectively to not use Assessor's Plat and Lots as legal descriptions. It also sets the stage for Standard 8.2 which provides for curative actions for deeds with these descriptions.

Standard 8.2 entitled "Correcting a Conveyance That Uses an Assessor's Plat and Lot Reference as the Legal Description" offers methods to cure the defective deed in the case where it is not possible to have the original Grantor or that Grantor's heirs, devisees, or legal representatives execute and record a corrective deed.

If the parcel consists of a lot on a recorded plat, and the depiction of that lot on the recorded plat substantially corresponds to the depiction of the lot on the Assessor's plat in use on the date of the defective deed, or if the deed includes a reference to the book and page of the deed vesting title in the grantor, and the metes and bounds description in that vesting deed substantially corresponds to the depiction of the lot on the Assessor's plat in use on the date of the defective deed, a practitioner may obtain and record an affidavit from the Tax Assessor stating that he/she has attached a true and genuine copy of the portion of the Assessor's plat map showing the lot as it existed on the date of the deed.

If, in addition to the Assessor's plat and lot reference, the deed states that it is the intention of the grantor to convey all of grantor's land located in the city or town to the grantee, the description in the deed will not be deemed defective because of the inclusion of the Assessor's plat and lot reference. If (a) the grantor's vesting deed used the correct legal description, (b) the grantor owned no other land in the city or town on the date of execution of the deed, and (c) more than ten years have passed since the defective deed was recorded, the defective description (containing Assessor's Plat and Lot only) in the deed will be deemed to be cured upon the recording of an affidavit from an attorney licensed to practice in the State of Rhode Island, stating that a search meeting the requirements of Title Standard No. 2.1 (50 year search) was conducted, and that the only parcel of land to which grantor held title on the date of the defective deed was the same land described in the grantor's vesting deed. The promulgation of this standard should

obviate the need to obtain a declaratory judgment in Superior Court in many circumstances.

Finally, proposed standard 3.20 entitled “Effect of Deed Recorded Without a Property Description” provides validity to a deed recorded for 10 years or more where the recording of a purchase money mortgage occurred immediately after recording of the subject deed and it contained the correct legal description. Additionally, it must be shown that the grantor of such deed owned no other real property within the City or Town where said deed was recorded and 10 years have elapsed since the deed was recorded and there is no record evidence of a challenge to the validity of the deed.

None of these standards are official yet, but when or if they are, they promise to assist practitioners with the often-protracted procedures required when faced with deeds without adequate legal descriptions, especially when they are far back in the chain of title and many of the players are no longer available to cure these defects.

Remember to check future Midweek updates for developments on the approval and promulgation of these new proposed standards.



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