



**New England Regional Midweek Update**  
**2/8/2023**

Dear Stewart Partners,

We hope you all stayed warm during the last week's polar vortex. Many of us have lived in New England our whole lives, and this is a new meteorological term for our vocabulary.

In this week's update we are focusing on Connecticut and Vermont. For Connecticut practitioners we have provided a summary of methods available to clear title of pesky discharge issues. We hope you find this helpful. On the Vermont front, we have included a case summary of a recent decision from the Vermont Supreme Court involving what rights exist for the holder of a right of way. In addition, we've included information about the Vermont Bar Association's new program of CLE courses available for Vermont attorneys.

Lastly, of general interest, we've provided information on a free webinar, sponsored by The Title Report, featuring Doug Duncan, Fannie Mae's Chief Economist, who will share his expertise on when single-family home sales are expected to rebound and how housing impacts the broader economic recovery. Registration information is below. As a reminder, Stewart will be hosting a webinar on the 2021 ALTA Loan policies on Thursday (tomorrow). CLE credit is available for this live webinar in NH, ME, VT, RI and CT. If you haven't registered, there is still time and a link is included.



### **Unreleased or Improperly Released Mortgages – The Never- Ending Title Problem**

Our Connecticut underwriting team frequently receives inquiries on how to deal with an unreleased or improperly discharged mortgage. The summary below provides a quick primer on the various common methods available to you to resolve these title problems.

In Connecticut, there are several statutes and Standards of Title to assist in resolving an unreleased mortgage or a mortgage released by the wrong party. Below are examples of such solutions:

#### **1. Missing Assignments and Releases**

1. CGS 49-9a – if release from improper party is filed on land records at least 5 years ago and affiant/current owner is in title at least 2 years, this affidavit operates to validate the filed release (only for 1-4 family residential properties, including condos.)
2. Standard of Title 18.7 , Sections A-C – affidavits filed pursuant to one of these sections do not release a mortgage but “makes title marketable” as to the

unreleased mortgage. Section A and B formats require affidavit by mortgagor attesting to attempts to find the last mortgage holder of record without success and mortgages must be of record at least 5 years for A to apply or 10 years for B or 20 years for C. Section C Affidavit is signed by the current title holder, but someone other than the mortgagor whereas Section A and B affidavits are signed by the mortgagor. The Standard requires an individual to sign such affidavits, not a fiduciary or attorney in fact, so if mortgagor or owner of record is deceased, this Standard is inapplicable.

3. CGS 49-8a affidavit signed by attorney or title insurance company - requires 15 days advance notice to lender via certified mail – and needs documentary evidence attached such as cancelled payoff check, matching payoff statement. This affidavit is rarely used.
4. 49-9 –subsection (d) indicates a release recorded prior to recording of assignment into releasor is effective even if the mortgage interest is acquired by the releasor after the execution of the mortgage. This addresses situations where date/recording of release pre-dates assignment. Prior to this statute, effective 10/1/06, you would have to re-record a certified copy of a release to get it in the right order.

## 2. MERS

1. Release to come from MERS (obviates need for successive assignments as notes are sold) but every now and then current holder releases instead – can use 49-9a if timing works, otherwise need corrected release signed on behalf of MERS; most lenders in the MERS system hold powers of attorney to sign on behalf of MERS.
3. Ancient Mortgage - CGS 49-13a – cites that a mortgage is invalid 20 years after a stated maturity date or 40 years after date of recording of mortgage if no due date is set forth in the mortgage. An affidavit must be recorded signed by owner of the property alleging these facts.
4. What if no statute or Standard applies?
  1. Occasionally the only solution for an unreleased mortgage is to bring an action per CGS 49-13 where one petitions the court to have a mortgage declared released; recording a certified copy of the judgment will act as a release. This section is applicable where more than 6 years have passed from maturity date, or 17 years from demand note date.

Contact a Connecticut Stewart underwriter with any questions and for forms of the referenced affidavits.



## Case Summary - Gladchun v. Eramo, & New Cingular Wireless, PCS, d/b/a AT&T - 2023 VT 5

In a recent decision, the Vermont Supreme Court held that an express right-of-way, providing for “ingress and egress” does not include the ability to install underground utilities within the limits of that right of way.

This dispute between neighbors in Granville, Vermont arose after Defendants, Michael and Diane Eramo (hereafter Eramo) granted an option to lease a portion of their lot to New Cingular Wireless, PCS, d/b/a AT&T (hereafter AT&T) to construct a 195-foot-high communication tower on their property. The proposal by AT&T would place the tower within an enclosure on Eramo's lot that would be accessed by the right-of-way with power and telephone lines to be buried underground and along the right-of-way to an existing utility pole on the nearest public road. Plaintiffs, Jeffrey and Alyssa Gladchun (hereafter Gladchun), whose property is burdened by the subject right-of-way, objected to the proposal arguing that the express and unambiguous terms of the right of way limit its use to ingress and egress only.

Procedurally, the lower Court held in favor of Eramo on a Motion for Summary Judgment, finding that the right of way was unambiguous, contained no express limits, and that the installation of underground utilities was a reasonable use of the right of way. Gladchun appealed.

In its decision on appeal, the Supreme Court looked first to the terms of the deed. Specifically, the relevant portion of the right-of-way states, "[s]aid right-of-way is for the purpose of ingress and egress to and from the conveyed premises". The Court relied on the Merriam-Webster Online Dictionary to determine the plain meaning of the words ingress and egress and held that, "[n]othing we can discern in the definitions of either word individually, or in combination, denote a right to install underground utilities."

Next, the Supreme Court determined that the lower Court erred when it evaluated the right-of-way as "general," which would have afforded the Court greater latitude in defining the scope and reasonableness of the right. Because specifics of the right-of-way, including its width and location, were clearly defined in the subject deed, the Supreme Court concluded that the right was the result of an arms-length negotiation between the original parties to the deed. Accordingly, the Court concluded, it is proper to enforce a strict interpretation of said right.

Finally, Eramo argued that the Court should adopt Comment (d) to § 4.10 of the Restatement (Third) of Property (2000), providing that anything transported through an easement corridor, including utility services, is proper unless there is reason to conclude that it was not the intent of the parties. The Supreme Court rejected this argument based on policy considerations, including the Court's established history of protecting private-property ownership interests and the Court's consistent approach of using the plain and ordinary meaning of language when interpreting deeds.

The Court reversed and remanded for further proceedings. The full text of this Decision can be found at: [Gladchun v. Eramo, & New Cingular Wireless, PCS, d/b/a AT&T - 2023 VT 5](#)

As a reminder to title policy issuing agents in all states, if an easement or other right is included in the policy as part of the land insured, the following exception must be taken in Schedule B, Part 1 of the policy:

"Terms and conditions of the [easement/right of way] granted in [deed/document] recorded in the land evidence records in [book/page/document number]."

For those agents who are issuing the 2021 policy forms, the boilerplate language at the top of Schedule B of the policies includes this exception.



## **Continuing Legal Education from the Vermont Bar Association**

The Vermont Bar Association recently announced a new program of CLE courses focused on the basics of law: “The Brown Bag Law Study Program” (BBLs).” The BBLs was inspired by the need to enhance learning opportunities available to candidates in the Law Office Study Program. Licensed attorneys who need a refresher on fundamental principles in specific areas of law practice will also benefit from these courses. For questions about upcoming BBLs courses, Email [info@vtbar.org](mailto:info@vtbar.org) with “Brown Bag Law Study” in the subject line. The classes will carry CLE credit consistent with the length of each program. The programs will be recorded and made available through the VBA’s digital library shortly after presentation.

The following two-part Real Estate course will be offered in February in connection with this new BBLs Series:

BBLs: Property & Real Estate – Part 1 (February 15, 2023 11:30-1:00)

BBLs: Property & Real Estate – Part 2 (February 22, 2023 11:30-1:00)

Topics to be addressed include freehold estates, future interests, the rule against perpetuities, easements, mortgages and recording systems.

Register @ <https://www.vtbar.org/event-calendar/>



## **Complimentary Webinar – 2023 Economic Forecast Series featuring Doug Duncan**

On Thursday February 14th at 1 PM, The Title Report is hosting a free webinar. Fannie Mae’s Senior Vice President and Chief Economist Doug Duncan says housing will lead the economy through what he considers will be a mild recession in 2023. He will expand on that and the outlook for the housing market during the Economic Forecast Series featuring Doug Duncan webinar.

During this complimentary presentation, he will share his expertise on when single-family home sales are expected to rebound, how housing affects the broader economic recovery, as well as home pricing, sales outlook, delinquencies, foreclosures, effects of unemployment on the market, the potential rise of HELOCs, and much more.

To register: [Economic Forecast Series featuring Doug Duncan webinar](#)

## **Upcoming Stewart Webinar on ALTA 2021 Loan Policy Forms**



**Topic:** 2021 Basic and Expanded Loan Policy Forms – What You Need to Know

**Date:** Thursday, February 9, 2023

**Time:** 10:00 a.m.

**Register:** [Click here to register](#)



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