



Dear Stewart Partners,

March Madness and the baseball season are upon us. Here's to spring and the coming warmer weather. In this week's Mid-Week Update, we are providing information on marketable title versus insurable title from a Connecticut perspective with respect to unreleased mortgages. The concept discussed and as it relates to letters of indemnity have broad application across all our New England states.

In addition, we have included some information on the Biden administration's title waiver program and which President Biden mentioned in his State of the Union address in early March. Lastly, we wanted to make you aware of three educational opportunities, read below for more details.



A Connecticut Perspective: Marketable v. Insurable Title and the Unreleased Mortgages By: Nancy Walkley, Esq. CT State Underwriting Counsel & Associate Senior Underwriter and David Piechota, Esq., CT Underwriting Counsel

It is very common for a title search to reveal an unreleased mortgage of a prior owner of a property that Stewart Title is being asked to insure when our agent is representing the buyer. If the lender on the mortgage is no longer in existence or difficult to reach to quickly request a release (assuming the loan had been paid in full) and if the seller has an owner title insurance policy, often a letter of indemnity is requested of the insurer, running to the title insurer of the buyer, requiring the indemnitor to provide a release post-closing if not before. Technically, if the buyer's attorney agrees to accept the indemnity in lieu of a title clearing release, the buyer is receiving insurable, but not marketable title since the title is not free from the mortgage encumbrances. Most buyers and their attorneys are inclined to accept this option but some insist the missing release be obtained before the closing. This could be due to the buyer's plans for the property, especially if the buyer is not intending to hold the title for a long period of time and has concerns that the missing discharge could give a future buyer a reason not to go through with the purchase.

The Connecticut Standards of Title Section 1.1 provides that title is unmarketable only when defects or irregularities can reasonably be deemed to present a real and substantial probability of litigation. Standard 1.3 directs contracts to refer to the Standards for a determination of marketability. If the mortgage is old and the mortgagor conveyed the property for consideration it may be a fair assumption that the mortgage was paid off.

Does this mean that title is marketable as there is not a likelihood of litigation over the unreleased mortgage? Not according to Standard of Title 18.7, Comment 3, which states

the mere possibility of a claim under the unreleased mortgage has been deemed sufficient to render the title unmarketable.

There are times when the effect of an unreleased mortgage will not affect the marketability of title under the circumstances set forth in Standard 18.7 (A), (B) and (C). A Conn. Gen. Stat. Section 47-12a affidavit may be executed and recorded in the land records to address the marketability issue if the requirements under those subsections can be met. The affidavit when prepared and recorded pursuant to this Standard of Title does not operate to release or discharge the mortgage. The recording of an affidavit in those cases that fall within the permitted circumstances creates marketable title as to the said mortgage as set forth in that Standard.

When a title is marketable, the title is clear and free from defects. This means real estate can be marketed for sale without the seller or potential buyer taking additional steps. However, insurable title means a property may have a known title defect or defects.

Generally, all marketable title is insurable, but not all insurable title is marketable. Marketable title exists when a reasonably prudent purchaser, knowing all of the facts, would be willing to purchase the property.

When a title is “insurable”, it means that there are known defects in the chain of title. However, with an insurable title, the title insurance company has agreed to provide insurance coverage against those defects so as to not affect the ownership or value of the property. The decision to accept insurable versus marketable title based on an indemnity for an unreleased mortgage has become commonplace in residential sales in Connecticut.



Title Policy Waiver Pilot Program

During President Biden’s State of the Union speech on March 7, 2024, he mentioned a pilot program recently announced by the FHFA whereby certain refinances would not require lender title insurance. This pilot program proposal is part of President’s housing plan. The proposal has received criticism from many stakeholders, and the American Land Title Association (ALTA) called the announcement a “purely political gesture offering a false promise of savings for homeowners while exposing consumers, lenders and taxpayers to greater financial risk.” One of the critiques of the pilot program is that it does not increase home affordability or homeownership for those in need. The Mortgage Bankers Association has also expressed concerns over the pilot indicating that the plan could actually undermine consumer protections, increase risk, and reduce competition.

ALTA published a press release on the pilot program, which can be read by following this link: [ALTA Press Release](#)

If you want to stay informed about the regulatory environment and what is happening in Washington, and to advocate on issues important to the industry and make sure state and federal legislators understand the value of the land title industry, you can join the Title Action Network (“TAN”). TAN is the premier grassroots organization promoting the value of

the land title insurance industry. Membership is free and once a member you will receive action alerts for relevant state and federal issues. To find out more, follow this link: [ALTA - Title Action Network \(TAN\)](#)



Upcoming Educational Opportunities

Massachusetts Continuing Legal Education Program (MCLE) – Marking Up Title Commitments- 4/4/2024

Two members of Stewart's Massachusetts Underwriting team, Jutta R. Deeney and Tracie Kester, will be part of a panel hosting MCLE's Marking Up Title Commitments, Eliminating Exceptions & Getting Endorsements Program on **Thursday, April 4, 2024** from **9:00 AM to 12:00 PM**

MCLE's tuition for this program is:

\$245 for non MCLE members / \$220.50 for MCLE members / \$122.50 for New Lawyers admitted to law practice within 5 years, Pending Admittees, Law Students and Paralegals/ Free for MCLE Online Pass Subscribers. (Tuition includes MCLE Real Estate Title Practice in Massachusetts book)

To register with MCLE for this program, follow this link: [MCLE Program Registration](#)

Stewart's Massachusetts Underwriters Talk Title – 4/10/2024

Join Massachusetts State Underwriting Counsel, Tracie Kester, Esq. for our second installment of Stewart Underwriters Talk Title. April's topic is **Deeds and Acknowledgments**. Tracie will lead a concise 30-minute session covering the specific requirements for sufficient acknowledgments on a Massachusetts Deed or Mortgage and why it's important in the title context. The session will also discuss signing authority for entities and some fraud and forgery risks to watch out for.

This complimentary webinar for Stewart's agents will take place on **April 10, 2024** from **11:00 AM – 11:30 AM**.

To register, follow this link: [Stewart's Massachusetts Underwriters Talk Title – 4/10/2024](#)

NELTA's Lunch and Learn Webinar: Problems with Private Ways – 5/29/2024

NELTA, which is the New England Land Title Association, will be hosting a live webinar on May 29, 2024, feature Danielle Andrew Long, Esq. of Robinson & Cole. Danielle will discuss frequently encountered issues with private ways and abutters.

The program is free to members of NELTA and \$50 for non-members.

For more information and to register follow this link:
<https://nelta.org/events/EventDetails.aspx?id=1842691>



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