

Dear Stewart Partners,

We are hoping you stay dry out there and that we have sunnier days this week. In this week's Midweek Update, we are reviewing releases of mortgages in Connecticut where the property is located in two or more towns, as well as the importance of reviewing organizational documents during a real estate transaction. Finally, we are providing you with a quick update on a new Connecticut CLE class available on Stewart Academy, as well as a reminder that the May installment of Massachusetts Underwriters Talk Title is now available in Stewart Academy for Massachusetts agents, in case you missed the live webcast.



Releases of Mortgages Where the Property is Located in Two or More Towns By: David Veleber, Connecticut Underwriting Counsel

I enjoy writing articles about the Connecticut Standards of Title because these Standards are often an overlooked resource to help attorneys cure defects or establish marketability of title in an expedient manner. Learning more about the Standards can help attorneys to address some common issues that arise in title searches. This article is going to discuss one such Standard and how it can help with an otherwise apparent missing release.

As Connecticut practitioners know, the land evidence records is a town/municipal system and the place for recording is with the municipal clerk's office. This is similar to the states of Rhode Island and Vermont. It isn't uncommon for a piece of property to be located in two or more towns and the mortgage is recorded in all of the towns where the property is located. For example, a property could be located straddling the town lines of two towns. As a result, the deed into the owner needs to be recorded in both towns and any mortgage on that property also needs to be recorded in both towns. Alternatively, many condominium projects are located partially in multiple towns and the mortgage needs to be recorded in all towns because of the interest in both the actual unit as well as in the common elements. In either case, since the mortgage is recorded in multiple towns, a release of the mortgage should be recorded in all towns where the property is located. But, what happens if it is not?

Connecticut Standard of Title 18.10 entitled, EFFECT OF FAILURE TO RELEASE A MULTI-TOWN MORTGAGE OR OTHER ENCUMBRANCE IN ALL TOWNS WHERE IT WAS RECORDED, is a newer Standard. It states:

"A mortgage or other encumbrance that was recorded in more than one town against (a) a single parcel of land lying in more than one town, or (b) a condominium unit located in a

development which is located in more than one town, but which was released in fewer than all such towns, does not impair marketability.”

The purpose of this Standard is to help eliminate the need to track down a separate release when a release is recorded in one town but not the other. Prior to this Standard, either a separate original release needed to be recorded in that second town or a certified copy of the release from the first town needed to be recorded in the second town. This copy of the release would often be attached to an affidavit to establish the Volume and Page of the mortgage recorded in the second town since the copy of the release being attached would likely only include the volume and page reference of the mortgage recorded in the first town. Per the comments under this Standard, “It is unnecessary for the title searcher to make inquiry regarding an unreleased mortgage or other encumbrance unless the record affirmatively discloses an intention that the mortgage or other encumbrance continue to remain of force or effect.”

The Standard does make a distinction with regard to blanket mortgages on multiple parcels of land. Under Comment 2 of the Standard, “If the unreleased mortgage or other encumbrance is a ‘blanket’ encumbrance affecting multiple parcels of land, whether contiguous or noncontiguous, then it must be released of record in every town in which a parcel is located.” So, a blanket mortgage is treated differently than a single mortgage on one parcel located in multiple towns.

Finally, the Standard provides some clarification when the property is part of a condominium project located in multiple towns. There is a preference for where the release should be recorded. When a unit in a condominium is located in one town, but the common elements allocated to said unit are located in an adjacent town, a release of a mortgage or other encumbrance recorded only in the town in which the unit itself is located does not impair marketability. If the release is only recorded in the town where the common elements are located and not in the town where the unit is located, then it is recommended that a certified copy of the release so recorded be obtained and recorded in the town in which the unit is located (but failure to do so does not impair marketability). So, the preference is for the release to be recorded in the town where the actual unit is located, but that is just a preference and marketability is not impaired even if the release is recorded in the town where just the common elements are located.

This Standard is helpful to real estate practitioners because it saves them time, effort, and recording fees by no longer requiring another release, or recording a certified copy, when the title search reveals there is a release in one town but not all.

Please contact your local underwriter to discuss a specific transaction or any questions regarding this, or any other, Standard of Title.



Reviewing Organizational Documents for Transaction Insurability

By: Katherine F. Fletcher, Connecticut State Counsel & Associate
Senior Underwriting Counsel

While working on purchases, sales, loans or other transactions that involve an entity (whether a limited liability company, corporation, partnership, trust or other entity), it is very

important to review the entity's organizational documents. Reviewing the organizational documents will inform you if the entity is registered, whether the entity is authorized to enter into the current transaction and who within the entity has the authority to sign documents and bind the entity. Moreover, organizational document review helps to prevent fraud by confirming the individual acting on behalf of the entity is authorized to do so, similar to reviewing photo identification for an individual.

If an entity is part of a transaction, prior to closing you can request copies of the entity's articles of formation, operating agreement, partnership agreement or by-laws, and certificate of good standing. Once you have copies of these items, the following confirmations can be made:

1. The entity's name as shown in the transactional documents is exactly the same as set forth in its articles of formation (i.e., all commas included; if a number is included within the name, whether the number is written out, etc.) The articles of formation is the only document that sets forth the entity's legal name and can also provide other important information about the entity including its address and registered agent.
2. The entity's state of organization as shown in the transactional documents is the same as set forth in its articles of formation.
3. The entity's purpose, which is found in the articles of formation and/or operating agreement, by-laws or partnership agreement, as the case may be, includes ownership of the underlying property or, generally, any activity which is permitted by the laws of the entity's state of organization.

If the entity is transacting business with a fictitious name (often referred to as "doing business as" or d/b/a), some states, such as Connecticut, require a certificate of trade name be filed with the clerk's office where the business is primarily transacted. Also, in some states a single-member limited liability company is not required to have an operating agreement.

After the entity's factual information is confirmed, it is important to determine whether the entity has authority to enter into the underlying transaction and the signatory signing the transactional documents also has legal authority to bind the entity to the terms of such documents. In the case of a limited liability company, often its operating agreement will designate a manager that has authority to enter into certain transactions on behalf of the company. However, sometimes a particular transaction is considered a "major decision" under the operating agreement. In this case, consent of a majority of limited liability company members, or specific members, may be required. If necessary, you can request a member's consent or resolution executed by the appropriate members which authorizes the transaction and the signatory to execute the documents. If the manager is also an entity, you may need to obtain copies of that entity's organizational documents and perform the same analysis detailed above. When reviewing a corporation's by-laws, often there is no manager or other person designated with authority to bind the corporation set forth in the by-laws. In these cases, you can request a certificate of incumbency, which sets forth the current directors and officers of the corporation and confirms the authority of such individuals to act on behalf of the corporation. If the transaction involves a trust and trustees, the trust agreement can be reviewed to confirm the trustees are appointed and have authority to enter into the transaction and bind the trust. A trustee's certificate should be obtained which will certify the names of the trustees (and any successor trustees) and provide a reference to the section of the trust that permits the underlying transaction.

Depending on the transaction and the state where the property is located, sometimes certain organizational documents need to be recorded on the land records. In Massachusetts, for example, if an entity is signing a deed or mortgage, and the Massachusetts Secretary of State's publicly available records does not identify the statutorily authorized signatory, then evidence of corporate (entity) authority needs to be recorded along with the instrument being signed. In Connecticut, for example, if a successor trustee is signing a similar instrument, a trustee's affidavit or certificate must be recorded on the land records.

The information provided above is a general summary of reviewing organizational documents in connection with a real estate transaction. Sometimes, the organizational structure of a seller or buyer/borrower is complex and requires a more detailed analysis. You can certainly feel free to reach out to a Stewart underwriter if you need assistance with your review in order to determine whether a transaction is insurable and whether the appropriate authority has been established.



New Connecticut CLE and Massachusetts Underwriters Talk Title May's Plot Plan Webinar Available on Stewart Academy

We are pleased to announce that a new Connecticut CLE program, "Insuring Ground Leases," has been added to Stewart Academy's Connecticut site. The program provides a 30-minute discussion on reviewing ground leases and related documents and issuing leasehold policies. For information and to gain access to Stewart Academy and this program, please contact your Stewart Account Representative.

Further, for our Massachusetts agents, Tracie Kester's webinar on Plot Plans is now available on Stewart Academy. If you didn't have an opportunity to listen to the live webcast, you can catch up on this informative webinar by accessing Stewart Academy.

For those with access credentials, paste this link into your browser: [Stewart.com/academy](https://stewart.com/academy)



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