



Dear Stewart Partners,

As we swing into another month and the busy prom, graduation, and wedding seasons, we hope you are getting out and enjoying the improving weather. In this week's update, we are providing you with some Stewart resources we hope you find useful, including a summary of life estates in Connecticut and Condominiums in Rhode Island. Of general interest, we've included a discussion of estate tax implication for the New England states relative to life estates.

As a reminder, please see the information at the end of this update about an upcoming Continuing Legal Education seminar on Vermont's standards of title.



**Clearing Title Encumbered by a Life Estate in Connecticut and a
Reminder of Estate Tax Implication for all New England States**

A life estate or life use is an estate in real property which is limited in duration to the life of its owner or to the life of some other designated person. A life estate can be granted to a third party, or it can be retained by a grantor. For example, A can convey a life estate to B, or A can convey the property to B, reserving a life estate for A. The person holding an estate in real property for the term of their life, or someone else's life is known as a life tenant.

Generally, no particular words or forms must be followed to create a life estate. All that is necessary is for the language of the instrument to manifest an intention to create a life estate.

When reviewing title commitments, we often see references to life estates. If the life tenant is alive and desires to release their life estate, a quit claim deed should be used. The deed should include the following: The intention of this quit claim deed is to convey the life estate in favor of Grantor granted by Quitclaim Deed dated _____ and recorded in Volume _____ at Page _____ of the said _____ Land Records. If the life estate is being released in connection with a sale, the releasing quit claim deed from the life tenant to the seller should be recorded before the deed from the seller to the buyer.

If the life tenant is deceased, a release deed is not necessary as the life estate terminated upon the life tenant's death, and the holder of the future interest became the owner of a fee simple estate. However, evidence of death needs to be recorded on the land records. Typically, this will be in the form of a 47-12a affidavit that can be signed by someone who

has knowledge of the life tenant's death (perhaps a child of the life tenant or an attorney referring to a death certificate). If a probate fee/estate tax lien certificate of release is necessary (see below for further discussion), this can be recorded and there will be no need for a separate affidavit to be signed or a death certificate recorded to evidence death.



Estate Taxes and Life Estates - some general reminders

As with some other kinds of non-probate property, a life estate may be classified as part of the gross estate of the decedent under the Internal Revenue Code ("IRC"), and therefore, in any transaction involving a life estate, one must consider whether the title is encumbered by an estate tax lien from both the federal and state perspective if the life tenant has died.

The IRC includes as part of the gross estate of a decedent for tax purposes any life use or life estate IF the now deceased life tenant or holder of the life use "reserved" or "retained" that interest, while conveying the remainder interest. For example, if a father, as the owner of property, grants the property to his children, but reserves a life estate, then, upon the father's death, for estate tax purposes the property will be included as part of the decedent's gross estate for estate tax filing purposes, both at the federal level and the state level. The IRC, however, does not include granted life estates in the assets counted in the gross estate. This is an important distinction.

A granted life estate is less common but does occur from time to time. This is where the property owner totally divests himself of ownership and divides the property rights between two third parties, so that one is the grantee of the property, but only for life, and the other grantee holds the remainder interest in the property. Attempting to avoid inclusion in the gross estate by conveying the property to a third party, who then grants the original owner a life estate may not accomplish the intended goal of removing the life estate from inclusion into the gross estate of the decedent. In Connecticut, for example, the Connecticut Department of Revenue Services has in the past still considered this a retained life use.

Depending in which state the property is located, different practices are used to address how one releases the land from the inchoate federal and state estate tax lien. Also, it is important to remember that the dollar threshold for what triggers an estate tax filing may vary between the state and the federal government, so one should not assume that a gross estate that falls below the federal threshold does not create liability under the state tax requirements.

Connecticut-

If the estate is a non-taxable estate for Connecticut purposes, the probate court will need to provide a probate fee/estate tax lien certificate of release. If the estate is taxable for Connecticut purposes, the Department of Revenue services will need to provide an estate tax lien release (in which case, a separate probate fee certificate of release will still be necessary from the probate court). While not required, we recommend recording

certificates of release on the land records to provide future title searchers with confirmation that no liens are outstanding. If any of these certificates are recorded, there will be no need for a separate affidavit to be signed or recorded to evidence death of the life tenant.

Note that if the life tenant has been deceased for more than 10 years, Subsection (d) of Section 45a-107b of the Connecticut General Statutes allows a person with an interest in real estate to petition the probate court for a release of the inchoate lien for probate fees where the lien arises out of a decedent's retained life use or a survivorship interest in the property provided certain conditions are satisfied.

If the estate is a federally taxable estate and requires a filing with the Internal Revenue Service (IRS), obtain from the IRS an estate tax closing letter or an account transcript showing transaction code 421 and the explanation "closed examination of tax return."

New Hampshire-

In New Hampshire there are no estate taxes imposed by the state. However, federal estate taxes may apply depending upon the value of the estate. NH has the following title standards addressing the requirements of taxable and non-taxable estates:

9-6. Federal Estate Tax Lien. Unless a notice to the contrary is otherwise recorded in the applicable Registry of Deeds, a federal estate tax lien may continue as a lien on all of the property included in the gross estate of a decedent from the date of death for a period of not more than ten years. The federal estate tax lien will not be binding against a purchaser of, or the holder of a security interest in or mechanic's lien on, the property transferred. IRC §6324(a).

7-16. Federal Tax Lien - Closing Letter. If the estate appears to be subject to a federal estate tax and the final account has not been filed, release of the federal tax lien, if obtainable, or estate tax closing letter, should be obtained and filed with the Circuit Court – Probate Division.

7-17. Federal Tax Lien - Gross Estate. Unless there are facts to the contrary, a title examiner may generally rely upon an affidavit that the affiant is the person responsible to file a federal estate tax return and that states the gross estate of the decedent is not large enough to necessitate the filing of a federal estate tax return under IRC §2031.

Maine-

Maine's estate tax lien applies to estates of persons who die after June 30, 1986, exists without the necessity of a lien certificate, and lasts for 10 years from the date of death or until discharged by certificate of the State Tax Assessor recorded in the registry of deeds. See 36 M.R.S. §§ 4061 and 4112. It does not, however, attach to property passing by right of survivorship to a surviving joint tenant who was the decedent's spouse at the time of the decedent's death. See 36 M.R.S. §§ 4072 and 4112. Further, if a decedent's personal representative, trustee or surviving joint tenant sells the decedent's interest in real property "for value," the grantee takes free of the lien. If, however, the conveyance is by Personal Representative's Deed of Distribution, by a Trustee for no consideration, by a surviving joint tenant for no consideration, or by an heir or devisee, the estate tax lien continues to encumber the property for 10 years from the date of death or until discharged as set forth above.

With respect to federal estate tax liens attaching to Maine property, Maine's Title Standards state that "[w]here death occurred within ten years prior to search, the possibility of a lien for federal estate taxes should be investigated . . . [and] evidence as to (1) whether the estate of such party-in-interest is subject to federal estate taxes and (2) whether any estate taxes were paid, should be obtained, if possible, and appropriate curative action taken, if necessary." Although no specific "curative action" is prescribed, the procedure set forth below for Massachusetts would be sufficient.

Massachusetts –

If the estate is a non-taxable estate for federal and/or Massachusetts purposes, record an affidavit signed by the personal representative or if no probate, by the decedent's immediate successor in title or person in actual or constructive possession of the property, stating that the decedent's estate did not necessitate a Federal and/or Massachusetts Estate Tax filing, as the case may be.

If the estate is a Massachusetts taxable estate and required a filing with the Massachusetts Department of Revenue, a Certificate of Release referencing the particular property must be obtained and recorded in the land evidence records.

If the estate is a Federally taxable estate and required a filing with the Internal Revenue Service (IRS), record an affidavit which attaches either the Federal Estate Tax Closing Letter along with evidence of payment for the amount shown as due, if any, or an Account transcript issued by the IRS showing transaction code 421 and the explanation "Closed examination of tax return."

See REBA Title Standards 3 & 24 and REBA Forms 32 & 32A

Note that if the date of death is more than ten (10) years ago, the property is deemed free of any inchoate lien for both state and federal estate taxes.

Rhode Island –

Rhode Island requires a release of the inchoate estate tax lien imposed by RIGL §44-23-12 for any real estate located within the state, regardless of its value. The discharge of the lien is obtained by filing an estate tax return with the Division of Taxation. The discharge must be recorded, and separate discharges must be obtained for each property owned by a decedent.

No additional documentation need be recorded if the discharge of the lien is recorded. The lien expires ten (10) years after the date of death.

Vermont –

In Vermont an Estate Tax Lien arises at the time a Notice and Assessment of Tax Lien is filed in the Land Records in the town in which the real estate is located. (See 32 VSA §7497. The lien shall arise at the time the notification or assessment is made by the Commissioner and shall continue until the aggregate tax liability with costs is satisfied in full or becomes unenforceable by reason of lapse of time. The lien shall be valid as against any subsequent mortgagee, pledgee, purchaser, or judgment creditor when notice of the lien and the sum due has been filed by the Commissioner with the clerk of the town or city in which the property subject to lien is situated.)

The Commissioner shall release the lien if:

- (1) the Commissioner finds that the liability for the amount demanded, together with costs, has been satisfied or has become unenforceable by reason of lapse of time; or
- (2) there is furnished to the Commissioner a bond with surety approved by the Commissioner in a sum sufficient to equal the amount demanded, together with costs, the bond to be conditioned upon the payment of any judgment rendered in proceedings regularly instituted by the Commissioner to enforce collection thereof at law or of any amount agreed upon in writing by the Commissioner to constitute the full amount of the liability; or
- (3) the Commissioner determines at any time that the interest of this State in the property has no value.

With respect to the limitations period, 32 VSA § 7494 provides that an action by the State must be brought within six years after the date the tax liability was collectible.

Notwithstanding, the Vermont Department of Taxes has taken the position that there is no Statute of Limitations applicable to the collection of Estate Tax Liens. (See Vermont Title Standard 27.1, Comment 1.)

It is important to note that Vermont Tax Liens attach to after-acquired property. (See Vermont Title Standard 2.2, Comment 5.)

The above discussions relative to Connecticut life estates and estate taxation in general is just a brief overview. There are issues that occasionally arise beyond the scope of this summary. Always feel free to reach out to a Stewart underwriter for further assistance.



Condominium Considerations In Rhode Island

Out of 930 homes currently for sale in Rhode Island, 176 are condominiums. They range in price from \$5,900,000 to \$119,900. Five are time-shares in the \$3,000-\$6,000 range. Chances are, if you are practicing real estate law, you are handling closings and title insurance for condos. This is a refresher on things to consider when conveying and insuring homes with this form of ownership.

The Rhode Island Condominium Act (R.I.G.L. 34-36.1) was enacted in 1982 and applies to all condominiums created in the state after July 1, 1982. Many of these provisions must be complied with in order to issue a clear title insurance policy for the new owner.

An important requirement is a "Resale Certificate" when the Unit for sale is not coming out of the developer. The Statute in Rhode Island (RIGL§ 34-36.1-4.09) requires the following information:

- (1) any right of first refusal
- (2) the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner;

- (3) any other fees payable by unit owners;
- (4) any capital expenditures anticipated by the association for the current and two (2) next succeeding fiscal years;
- (5) the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects;
- (6) The most recent regularly prepared balance sheet and income and expense statement, if any, of the association;
- (7) The current operating budget of the association;
- (8) any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant;
- (9) A statement describing any insurance coverage provided for the benefit of unit owners;
- (10) Whether the executive board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned thereto violate any provision of the declaration;
- (11) Whether the executive board has knowledge of any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the condominium; and
- (12) the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof.

A buyer's attorney must review the certificate to ensure that all these items are included in the Resale Certificate. The Resale Certificate should be recorded as part of the sale transaction.

The association may require a unit owner to pay a fee of no more than \$125 for the certificate. If the association fails to provide a certificate within 10 days of the request from the unit owner, they can be subject to a civil penalty of not less than \$100 or more than \$500.

The purchase contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever first occurs.

Legal Description of Units:

The RI Condominium Act sets forth the requirements for the legal descriptions of Units:

§ 34-36.1-2.04. Description of units

A description of a unit which sets forth the name of the condominium, the recording data for the declaration, the municipality, city or town in which the condominium is located, and the identifying number of the unit, is a sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws.

While you may include it in your deed, the Commitment and Title Policy shouldn't include the numerical percentage of interest in common areas.

Pay special attention in deeds if parking spaces or storage spaces are being conveyed or are simply easements or assignments of those spaces. A conveyance is insurable while an easement is not.

Other considerations:

Is it a sub-condominium? Then it is subject to the Master Condominium declaration as well. The terms and conditions of both declarations will be exceptions in the policy and should be reviewed.

The final policy should have these exceptions to coverage in it:

Covenants, conditions, restrictions, reservations, rights of first refusal, easements, liens for assessments, options, powers of attorney and limitations on title created by the laws of the state where the Land is located (Rhode Island Condominium Act, R.I. Gen. Laws §34-36.1-1 et seq. and the Rhode Island Condominium Ownership Act, R.I. Gen. Laws §34-36-1 et seq, as amended and as applicable), or set forth in the Declaration of Condominium, Master Deed or Declaration of Trust and in the related By-Laws as duly recorded in the appropriate Public Records, as the same may have been amended, and in any instrument creating the estate or interest insured by the Policy.

Loss or damage arising as a result of liens for common charges and attorney's fees pursuant to the terms and provisions of RI General Laws Chapter 34-36.1.

As always, if you have any questions about insuring a condominium, reach out to your Stewart Underwriter.



Upcoming Seminar Featuring Stewart's Vermont Underwriting Counsel

Stewart's Vermont State Counsel will be presenting a one-hour seminar on May 10, 2023 on the Vermont Title Standards. Learn how standards are created and approved and about some of the most commonly used standards for real estate practitioners.

Register using the following: www.vtbar.org/event-calendar



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