New England Regional Midweek Update
5/7/2025

Dear Stewart Partners,

It's been a rainy several weeks but we are looking forward to the arrival of May flowers, just in time for Mother's Day this Sunday. In this week's Midweek update, we consider a controversial "administrative fee" one Vermont municipality is charging to record transfer tax returns and the risks and implications associated with that practice going unchecked. We also discuss a newly proposed ten year Statute of Limitations for commencement of foreclosure actions, which is expected to be passed by the Connecticut Legislature.

For our Connecticut agents seeking CLE credit, Stewart Academy has a new on-demand course about ground leases, which is now available for viewing. Additionally, for our Massachusetts agents who want to know more about Plot Plans and other land plans, but cannot attend today's live webinar with Massachusetts' State Underwriting Counsel, Tracie Kester, check back with Stewart Academy next week for the recording. Lastly, Jill Spinelli Quong, Esq., our Vermont State underwriter, will be presenting a live webinar for the Vermont Bar Association on the status of title fraud in Vermont. For information on Stewart Academy and for registration information on the offering by the Vermont Bar Association, see below.

West Windsor's Real Estate "Recording Fees" Stir Legal Concerns By: Jill Spinelli Quong, Esq., VT State Underwriting Counsel & Associate Senior Underwriting Counsel

In a recent development, the Town of West Windsor, Vermont, has come under scrutiny for its real estate fee structure, which appears to exceed the limits set by state law. The Town is charging an additional $15.00 "lister's fee" for all Property Transfer Tax Returns (hereafter "PTTR") recorded—on top of standard recording fees—labeling the charge as an administrative fee. This practice has raised concerns among real estate professionals and legal experts regarding the town's adherence to statutory fee guidelines.

Having municipal fees set by statute can provide several benefits, including predictability, public accountability, legal oversight, and uniformity across municipalities. Despite these important principles, there has been no immediate response from the Secretary of State or any other regulatory authority tasked with overseeing municipal compliance. As a result, West Windsor's fee structure presents some risks that attorneys must now consider. For example, for mail-in-recordings, if an attorney sends a document package for recording that includes a Deed/PTTR/Mortgage and the attorney is unaware that the additional $15.00 fee is required they will remit less than what is owed. As a result, the Clerk may set aside the entire recording package until the entire fee is paid - creating a risky gap between the time

of sale and the time of recording during which an intervening lien could be filed; or, the Clerk may set aside only the Deed and PTTR, but will record the mortgage out of order because the correct mortgage fees were remitted. Neither scenario is acceptable, and both create insurability risks.

West Windsor's lister's fee sets a troubling precedent for other Vermont municipalities. Allowing one town to impose additional, unlegislated charges opens the door for others to follow suit, eroding the uniformity and predictability the state's fee statutes are designed to ensure. Such a shift could result in a patchwork of inconsistent fees and administrative practices across towns and an increase in post-recording corrective actions needed to address recording gaps and errors in document recording order.

The Vermont Secretary of State recently published their Guide to Vermont Town Clerks. This is a great resource for Vermont real estate attorneys and paralegals that includes an alphabetical list of clerks and treasurers and their mailing address, phone number, and hours of service. In light of the troubling precedent set by West Windsor, it is critical that real estate professionals contact the clerk for any mail-in-recordings to confirm the fees before submitting documents for recording.

Connecticut Foreclosure Statute of Limitations and Revision to C.G.S. §49-13a – Raised Senate Bill 1336 By: Frank Cammarano, Esq., Underwriting Counsel – Connecticut

The latest amendment to raised Senate Bill 1336 pending in the Connecticut General Assembly's 2025 legislative session seeks to establish a statute of limitations for bringing an action to foreclose on a mortgage for a one-to-four-family dwelling occupied by the mortgagor as their residence. Under the bill, the bar on bringing an action is the earlier of (1) ten years after the date fixed for making the final payment due or the maturity date set forth in the mortgage or note; or (2) ten years after the last payment occurred.

The bill also reduces from twenty years to ten years after full performance was due the time after which an unreleased mortgage can be released by affidavit pursuant to C.G.S. §49-13a under certain circumstances.

Foreclosure Statute of Limitations

The bill provides that a foreclosure action on these residential mortgages must begin by the earlier of:

1. Ten years from the date fixed for the making of the last payment or the maturity date set forth in the mortgage or the note, bond or other obligation secured by the mortgage; or
2. Ten years from the date on which any payment on account by, or on behalf of, the debtor last occurred.

The bill's ten-year statute of limitations may be extended if there is a written instrument that extends the last payment or maturity date set forth in the mortgage or the note, bond or other obligation secured by the mortgage.

The ten-year limitation would be effective January 1, 2026, but does not apply to any mortgage recorded prior to January 1, 2026 and in first priority at the time of recording, or any mortgage subordinate to a first mortgage at the time of recording but still held by the original mortgagee.

Existing law, unchanged by the bill, imposes a six-year statute of limitations for bringing an action on the note pursuant to C.G.S. §52-576. The Connecticut Supreme Court has held that a judgment of strict foreclosure of a mortgage is separate and distinct from an action on the underlying note. Mechanics' Bank of New Haven v. Johnson, 104 Conn. 696 (1926). It is well established that the mortgagee is entitled to pursue its remedy at law on the note, or to pursue its remedy in equity upon the mortgage, or to pursue both. A note and a mortgage given to secure it are separate instruments, executed for different purposes and an action for foreclosure of the mortgage and upon the note are regarded and treated, in practice, as separate and distinct causes of action, although both may be pursued in a foreclosure suit.

Invalidity of Old Unreleased Mortgages Pursuant to C.G.S. §49-13a

Under current law, when an unreleased mortgage appears in the land records and the mortgagor or current titleholder has been in undisputed possession for at least twenty years after the maturity date stated in the mortgage, the mortgage is invalid provided the person in possession files an affidavit in the land records of the town in which the subject property is located pursuant to C.G.S. 49-13a(a). The latest amendment to raised Senate Bill 1336 reduces the minimum undisputed possession time from twenty years to ten years.

This bill is intended to address “zombie mortgages” wherein buyers of debt instruments purchase charged-off mortgage loans from lenders and wait years before bringing an action to foreclose on the mortgage. By establishing clear time limits, the bill aims to protect borrowers who may mistakenly believe their mortgage has been settled, shielding them from unexpected hardship resulting from foreclosure of an otherwise dormant mortgage.

The bill, under its original form as Raised House Bill 6878, received favorable support from both the Banking Committee and Judiciary Committee this session. Under its current form as an amendment to Senate Bill 1336, it is expected to receive the same support and pass the legislature this session.

Stewart Academy

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For information and to gain access, contact your Stewart Account Representative.

Jill Spinelli Quong presenting for the Vermont Bar Association

Title Fraud in Vermont – Jill Spinelli Quong will be presenting a one hour seminar on June 4, 2025 at 8:30am on Vermont Title Fraud and will highlight a recent case of vacant land fraud that occurred in Jericho, VT that was discovered through the prudent actions of our Agent before any loss occurred. Register here.

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