

Dear Stewart Partners,

In this week's update, we are providing you with some Stewart resources we hope you find useful, including general underwriting information on insuring sales of property out of a bankruptcy and Connecticut Standard of Title 18.3 – Release of Mortgage by One of Multiple Co-Mortgagees.

We are also including a link to the SANS OUCH! Newsletter which features an article on malware risks. Please feel free to share this with your family, friends and colleagues.



Sales out of Bankruptcy Proceedings By: Eileen C. O'Shaughnessy
Esq., Rhode Island Underwriting Counsel

Bankruptcy sales can offer unique opportunities for purchasers of real property—often at discounted valuations—but these transactions also present distinct legal and title-related risks. For counsel representing buyers, lenders, or title insurers, understanding the overlay between federal bankruptcy law and state real property law is critical. This article explores key considerations related to title insurance in the context of real estate sales conducted under the supervision of the U.S. Bankruptcy Court.

Section 363 Sales

A sale of property pursuant to 11 U.S.C. § 363(b) allows a debtor in possession or bankruptcy trustee to sell estate assets outside the ordinary course of business, subject to notice and court approval. More significantly, a sale under §363(f) permits the debtor to sell property “free and clear” of liens, claims, encumbrances, and interests, provided certain statutory criteria are met.

Buyers—and their title insurers—take great comfort in the court's order approving such a sale. However, the presence of a bankruptcy order alone is not always dispositive for purposes of issuing title insurance.

Stewart requires a final, non-appealable order authorizing the sale in any bankruptcy context. The appeal period is distinct from the 14-day period under Bankruptcy Rule 6004(h), which is a bankruptcy rule of procedure relating to the stay of orders authorizing the sale of property.

Sales by a Chapter 7 Trustee

In a Chapter 7 bankruptcy, a trustee is appointed to liquidate the debtor's non-exempt assets to pay creditors. This includes any real estate that is not protected by exemption laws.

A key feature of a sale by a Chapter 7 bankruptcy trustee is evaluation by the trustee of the available equity in the property. If there is equity, the trustee lists and sells the property. Listing and selling the property will require court approval, and competitive bidding is often encouraged. The proceeds of the sale are then distributed to creditors according to priority rules.

Debtor-in-Possession (DIP) Sales in Chapter 11

In a Chapter 11 bankruptcy, the debtor remains in control of their assets as a "debtor-in-possession" and may sell real estate to reorganize the business.

As a debtor in possession under a Chapter 11 bankruptcy, the debtor can propose sales as part of a reorganization plan or a standalone transaction. As with other types of bankruptcy sales, the court must approve the proposed transaction, which requires an analysis of whether the sale would benefit the estate.

Sales in Chapter 13 Cases

In Chapter 13 bankruptcy, debtors propose a repayment plan over a term of years. While the debtor typically retains their assets, they may opt or be required to sell real estate during the plan.

A sale in a Chapter 13 bankruptcy can be either voluntary (to fund the repayment plan) or necessary (if the plan requires it). Like all other sales discussed, the debtor will be required to obtain approval from the court, as well as the trustee overseeing the bankruptcy.

Title Insurance Considerations

As mentioned previously, a court order is the necessary first step to evaluate whether the title to property in bankruptcy can be insured. In circumstances involving a sale as part of a repayment plan or plan of reorganization, it is critical to review the plan and confirm that the plan has been allowed by the court and there are no objections pending. Understanding precisely what has been requested and what has been allowed by the court will enable the title agent to properly prepare a commitment with the necessary requirements. Many times, the sale order or plan contemplates the payment of secured liens as part of the sale.

Further, it will be necessary to confirm that notice was properly given to all creditors, not just those who hold a secured interest in the property. This will require a review of the bankruptcy docket and filings on the PACER website. Lastly, as with any court order, prior to insuring, the order must be a final, non-appealable order. In most instances, the court order allowing the sale will be required to be recorded in conjunction with the deed and other transfer documents.

Sales in the bankruptcy context are complicated and present unusual risks. For this reason, we view insuring sales in the bankruptcy context as an extra-hazardous risk which requires underwriter approval prior to insuring. Please contact your local underwriting counsel, who is always here to assist you.

Virtual Underwriter has a chapter dedicated to bankruptcy and provides useful information for a variety of circumstances you may encounter. To read this section, follow this link:

[Bankruptcy](#)



Connecticut Title Standard 18.3: Release of Mortgage by One of Multiple Co-Mortgagees By: David Veleber, Esq. Connecticut Underwriting Counsel

In a continuing series discussing Connecticut Standards of Title and how they can help to clear mortgages from your title, **Connecticut Title Standard 18.3** addresses the legal authority of one co-mortgagee to release a mortgage when multiple parties are listed as mortgagees. This standard plays a crucial role in real estate transactions involving joint mortgage holders.

Standard 18.3 of the 1999 version of the Connecticut Standards of Title states, "When a single debt is owed to two or more co-obligees, which single debt is secured by a mortgage to such co-obligees, any one of them may receive payment and effectively release the mortgage, regardless of whether the co-mortgagees hold title as tenants in common or joint tenants with right of survivorship."

This Standard is useful and important because we often get questions regarding what to do when there are co-mortgagees and how to get a good and proper release of the mortgage. When a single debt is created in favor of two or more persons, regardless of what rights such payees may have as to one another, they do not have separate rights to demand separate payments from the debtor. Only one payment is required. Where there is one debt, under this Standard, any one co-mortgagee can receive payment in full and issue the release of the mortgage. This is true even when a mortgage may start with one mortgagee but be assigned out, ultimately, to multiple co-mortgagees.

Per Comment 2 of the Standard, if payment is made to one of such co-mortgagees, that person can give a full release of the mortgage. The justification for this is set out in the Standard and other treatises. Also, as stated in this comment, the release is still effective even though the payee receiving payment fails to account to the other joint payee. Further, since the obligor may pay the mortgage debt to any of the co-mortgagees, such payment satisfies the condition of the mortgage which, under Connecticut law, renders the mortgage deed null and void. This helps to protect the debtor because they can make payment to any one of the co-mortgagees and rely on that payment to satisfy the mortgage, even if another co-mortgagee objects.

Comment 3 discusses Subsection (d) of Section 42a-3-110 of the Connecticut Commercial Code and its relation to mortgages. While this provision of the Connecticut Commercial Code establishes the rule applicable to negotiable instruments, it is not binding as to mortgages that may secure those instruments. The Comment states, "The rule espoused by this Standard is based on principles of mortgage law, as supported by the authorities cited in the Comments to the Standard and is one on which the bar has relied for many years. Based on those authorities and on that reliance, there is no compelling reason for changing this Standard, despite its apparent conflict with the U.C.C. provision."

As pointed out in Comment 4 of the 1999 Standard, this Standard eliminates the apparent distinction made by previous Standards 18.3 and 18.4 of the 1980 edition of the Connecticut Standards of Title between co-mortgagees who are tenants in common and co-mortgagees who hold title to the mortgage as joint tenants with right of survivorship. Under the current Standard 18.3, the old Standard 18.4 is now eliminated and the nature of the tenancy as between co-mortgagees is irrelevant to the application of this Standard. The Standard now affirms that the form of co-ownership does not affect the ability of one co-mortgagee to release the mortgage. Even upon the death of a joint tenant, the survivor may release the mortgage without needing to record the death or involve the deceased's estate.

Notwithstanding the above, a release signed by all of the co-mortgagees is still a good idea if you can get it, but it is not necessary for marketable title and a proper release. Also, if you have the opportunity to draft the release or have input in the drafting, it is recommended that the release include a statement that the underlying debt has been paid in full or has been fully satisfied since the Standard is premised on the concept that a debtor is entitled to a release upon payment of the debt, regardless of to which co-mortgagee the full payment was made.

Connecticut Title Standard 18.3 simplifies and clarifies mortgage releases involving multiple co-mortgagees. It ensures that a single co-mortgagee can release the mortgage upon payment, debtors are protected from internal disputes among co-mortgagees, and the form of co-ownership does not limit the authority to release.

This Standard is helpful to real estate practitioners because it saves them time and effort by not requiring a release of mortgage be signed by all of the co-mortgagees when the debt has been paid in full.

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



June's SANS OUCH Newsletter

The June 2025 SANS OUCH security awareness newsletter is out with a story about defending against malware. Malware is an ever present risk that can have dangerous consequences. This month's newsletter contains strategies to protect yourself from cybersecurity threats. Follow this link for the story: [ouch!_english_june_2025_malware.pdf](#)



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