



New England Regional Midweek Update
9/27/2023

Dear Stewart Partners,

This week's update is our first update of the fall season, as autumn officially started in the early morning hour this past Saturday. This week's Mid-Week Update includes information about FIRPTA withholding in the sale of real estate and also includes a summary of highlights of a new law in Connecticut, effective October 1, which addresses mortgage modifications and mortgage payoffs. Also, in case you missed it, last week Stewart issued two Underwriting Bulletins. The first bulletin was directed to all issuing agents and dealt with property subject to civil or criminal forfeitures. This bulletin revised Stewart's underwriting requirements relative to property subject to forfeiture. The second bulletin was issued to Connecticut agents and dealt with a revised law that impacts requirements relative to smoke and carbon monoxide detectors in the sale of real estate. Links to both bulletins are below.



FIRPTA – What Is It and Why Is It Necessary?

The Foreign Investments in Real Property Tax Act, FIRPTA, is a tax law requiring each Buyer to hold back 15% (increased from 10% on February 17, 2016) of a contract sale price from a foreign Seller and deposit the withheld FIRPTA funds with the IRS to ensure the foreign Seller settles their U.S. federal tax affairs. All U.S. real estate transfers are subject to FIRPTA rules. FIRPTA may apply to Individuals, Corporations/Stockholders and Limited Liability Companies. It is important that the closing attorney or settlement agent and buyer's counsel understand FIRPTA to properly represent their clients. Title insurance does not insure against FIRPTA matters as it relates to the seller's tax obligations and the buyer's (transferee's) withholding obligations.

FIRPTA can be thought of in a manner similar to payroll tax withholding compliance. FIRPTA is not the same as payroll tax, but the concept is very similar, so if you understand the concept of tax being withheld from your paycheck as a prepaid tax deposit, then you already have an understanding of FIRPTA.

The purpose of FIRPTA is to ensure the Foreign Seller settles their U.S. tax affairs by holding Seller's money at the U.S. Treasury until Seller files a U.S. tax return. The Seller will get a refund of the withheld FIRPTA funds if one is due. If a Withholding Agent (Buyer) fails in their obligation to withhold, then the IRS will go after the Withholding Agent for the funds that should have been withheld plus penalties and interest.

It is important/necessary for the Title Agent to require either a Certificate of Non-Foreign status in every sale or withhold and remit the FIRPTA deposit. This is sound practice for all Title Agents. If Seller provides Buyer a "Certificate of Non-Foreign Status" (CNS), Buyer may rely on the CNS. Buyer is not required to withhold a FIRPTA funds deposit from Seller unless there is reason for Buyer to believe Seller's CNS is false.

Title Agents should know that there are firms that deal with FIRPTA compliance and should use them as a resource when necessary. One such firm has produced an educational video which provides good information about FIRPTA and is geared to settlement agents. The video does have some Texas specific practice references, as the consulting firm is based in Texas, but the video does a great job explaining FIRPTA. To view the YouTube video follow this link: [FIRPTA Training for Escrow Officers - YouTube](#)

To view publications distributed by the IRS, follow this link: [Reporting and Paying Tax on U.S. Real Property Interests | Internal Revenue Service \(irs.gov\)](#)



New Connecticut Legislation Regarding Payoffs and Mortgage Modifications

The Connecticut General Assembly has adopted new legislation that addresses mortgage modifications and mortgage payoffs, among other things. Effective October 1, 2023, House Bill 6688 (Public Act No. 23-45) amends foreclosure mediation and mortgage release provisions of the Connecticut General Statutes. Here's what you need to know:

Mortgage Modifications – Foreclosure Mediation Program

First, the bill requires a mortgagee that agrees to modify a mortgage pursuant to the Ezequiel Santiago Foreclosure Mediation Program, established pursuant to Section 49-31m, to send the modification of mortgage to the mortgagor for execution at least fifteen (15) business days prior to the first modified payment due under the modification. The mortgagee (or mortgagee's attorney) may satisfy this requirement by delivering the modification to (A) the mortgagor, or (B) if the mortgagor is represented by an attorney, to both the mortgagor and their attorney.

Release of Mortgage

Second, the bill amends Section 49-8 to specify where a release of mortgage should be sent, requiring the mortgagee or a person authorized by law to release a mortgage, to execute and deliver, or cause to be delivered, the release to the town clerk of the town in which the real estate is situated. Alternatively, the release can be sent to the mortgagor or designated representative of mortgagor, if requested in writing by said parties.

The bill further states that if a release is not delivered to the mortgagor (or its designated representative) in accordance with the above, the mortgagee (or authorized person) shall deliver a copy of such release to the mortgagor concurrently with the delivery of such release to the town clerk.

Lastly, the bill goes on to add that a mortgagee shall accept, as payment tendered for satisfaction or partial satisfaction of a mortgage loan, one of the following forms of

payment: i) a bank check; ii) a certified check; iii) an attorney's clients' funds account check; iv) title insurance company check, v) wire transfer; or vi) any other form of payment authorized under federal law.

For more information and to read the legislation in full, visit here: [Public Act No. 23-45](#)



In Case You Missed It – Recently Issued Stewart Bulletins

Bulletin SLS2023011 – UNDERWRITING – Forfeitures (Revised)

There are two types of forfeiture, civil and criminal. Real property is subject to forfeiture if it facilitates an illegal activity or is the traceable proceeds of an illegal activity. Real property will be considered the traceable proceeds of the illegal activity if money earned from the illegal activity was used to purchase the real property. It is important to note, that if even a small percentage of the purchase price was paid using those illegal funds, the real property could be subject to forfeiture.

This bulletin revises Stewart's underwriting guidelines relative to the insurability of property that is subject to a forfeiture proceeding. Please note that insuring any property which comes through a forfeiture proceeding is considered an extra-hazardous risk and must be approved by Stewart's underwriting personnel.

To view the bulletin, follow this link: <https://www.virtualunderwriter.com/en/bulletins/2023-9/sls2023011.html>

Bulletin CT2023002 – UNDERWRITING - Smoke and Carbon Monoxide Detectors: New Statutory and Affidavit Requirements Regarding Smoke and Carbon Monoxide Effective October 1, 2023

This bulletin was issued to Connecticut issuing agents and highlights changes that will be effective on October 1, 2023 as they relate to compliance with Smoke and Carbon Monoxide Detector requirements in the sale of real estate. The changes are significant, particularly with regard to the elimination of the option to provide a credit to establish compliance with the law. Additionally, the revised law requires the seller to provide an affidavit. A new form affidavit is being developed by the Connecticut State Fire Marshall, but is not presently available. Please note that once the form becomes available, this bulletin will be revised to include a link to the form affidavit.

To view the bulletin, follow this link: <https://www.virtualunderwriter.com/en/bulletins/2023-9/ct2023002.html>

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