

Dear Stewart Partners,

We hope you are enjoying the typical New England weather this week – short sleeves one day, three layers the next! In this week’s Mid-Week Update, we are sharing a link for a complimentary webinar happening today hosted by The Title Report featuring Stewart’s own Dr. Ted Jones. In addition, we are providing an overview of the SAFE Act, as well as a review of the underwriting requirements when handling conveyances from an estate in Connecticut.



Upcoming Webinar

International Real Estate expert Dr. Ted Jones will share his latest insights on the housing and mortgage market in this complimentary webinar.

Attend live to learn more about these indicators and more:

- What will happen with interest rates next?
- What are the latest projections for home sales?
- Will we see an uptick in mortgage lending volume?
- Will more affordable housing options enter the market?
- What is the latest in home values?
- And much more...

Topic: Economic Forecast

Date: April 19, 2023

Time: 2:00 p.m.

Register: [Click here to register](#)



SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT (SAFE ACT)

Congress enacted the SAFE Act to enhance consumer protection and reduce fraud through minimum standards for the licensing and registration of state-licensed mortgage loan originators. The law calls on the states to implement and enforce these standards, and every state has enacted its own version of the SAFE Act that requires mortgage loan

originators to have a set minimum of pre-licensing education and annual hours of continuing education.

The SAFE Act created a national licensing and registration system for residential mortgage loan originators called the “Nationwide Mortgage Licensing System & Registry,” or “NMLS” (<http://mortgage.nationwidelicencingsystem.org>). The purpose of this registry is to provide regulators, employers and borrowers with a simple means of tracking and investigating the employment and disciplinary histories of mortgage originators. Licensing requirements for each state can be found on NMLS website.

Effective July 21, 2011, administration and enforcement of the SAFE Act was transferred to the Consumer Financial Protection Bureau (CFPB). You can submit a SAFE Act inquiry to the CFPB by e-mailing to CFPB_SAFEAct_Inquiries@cfpb.gov. Consumers and mortgage loan originators with questions regarding the SAFE Act and state licensing requirements should contact the mortgage regulatory agency in their state.



CONVEYING TITLE FROM AN ESTATE IN CONNECTICUT

The Connecticut Probate Court oversees the transfer of a decedent’s property in a process called probate. Real property owned by a decedent as a tenant in common is subject to probate. It is not unusual for title companies and agents to handle transactions in which the last person in the chain of title is deceased. The completion of probate proceedings and the recording of certain documentation are often essential to establish the marketability of title of a decedent’s real property.

The Intestate Estate

A person who dies without a Will is said to have died intestate. An administrator is the person appointed by the court to settle the estate when there is no Will. While title to real property owned by an intestate decedent passes by operation of law to the decedent's heirs, the estate must first be settled with the Probate Court and certain documentary evidence of title must be recorded in the land records to establish marketable title. In addition, it is important to determine that there are no inchoate liens for Connecticut succession (or estate) taxes or probate court fees. If real property of the decedent is to be conveyed to a third party as part of the administration of the estate, the following items are required:

- Notice for Land Records/Appointment of Fiduciary must be recorded with the town clerk in the town where the property owned by the decedent is located.
- Estate Tax and Probate Fee Lien Clearance – This is ultimately evidenced in a document entitled “Certificate Releasing CT Estate Tax and Probate Fee Liens”; however, if the decedent died prior to 2015, a release of probate fee liens is not necessary, and the title of the Release will vary slightly. This Certificate should be recorded on the land records.
- A court order authorizing the fiduciary to sell the property is issued by the Probate Court. The Fiduciary Deed should reference such court order (but is not required). While not necessary, the court order is often recorded.

- The sale authorization order is subject to a thirty (30) day appeal period which runs from the date upon which all “interested” parties were mailed a copy of the order. If the closing is taking place prior to the expiration of the appeal period, waivers of the appeal period are needed from all interested parties.

The Testate Estate

A person who dies with a Will is said to have died testate. An executor is a person named in a Will to settle the estate and to follow the terms of the Will after the Will has been admitted to probate. Similar to intestate estates, the probate process will determine status of title. Either the Probate Court will order the devise of the property in accordance with the Will or the executor will convey the property to a third party. The conveyance by the executor may be necessary to fulfill the terms of the Will, pay the debts of the decedent, or fulfill the legacies as set forth in the Will. An executor must be given the power to sell in the Will or seek court approval for the sale. If the executor chooses to convey the property to a third party, the following items are required:

- Notice for Land Records/Appointment of Fiduciary must be recorded with the town clerk in the town where the property owned by the decedent is located.
- Estate Tax and Probate Fee Lien Clearance – As with intestate estates, this Certificate should be recorded on the land records.
- Confirmation the Will authorizes the executor to sell the real property. The Executor’s Deed should contain a statement that the Executor is authorized to convey the property pursuant to the Will (but is not required). If the Will does not contain such authorization, a court order authorizing executor to sell the property is issued (subject to a thirty (30) day appeal period) and should be referenced in the Deed (but is not required).

Note that for both intestate and testate estates, if real property of the decedent is devised or distributed to the beneficiaries or heir(s) of such decedent rather than sold during the administration of the estate (which happens from time to time depending on the circumstances of the estate) only a Certificate of Devise or Distribution and Estate Tax and Probate Fee Lien Clearance need be recorded on the land records.

Please also note that a federal estate tax may be due when the gross taxable estate of the decedent exceeds a certain amount, which amount changes from time to time. In such case, a release of federal tax needs to be recorded. Federal estate taxation is complex and beyond the scope of this article. If a federal estate tax return is required or if there is any doubt about whether such a return is required, professional advice is strongly recommended.

This is just a brief overview of certain underwriting requirements when conveying property that is part of an estate. For additional information and to better understand both statutory and title company requirements, please reach out to your local underwriting counsel or account representative. We are always happy to answer questions and/or provide assistance.



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