



**New England Regional Midweek Update**  
**4/26/2023**

Dear Stewart Partners,

Whether you're returning from Spring vacation or about to leave on holiday, we hope you are enjoying this warmer New England weather and these early days of Spring.

This week we are featuring a discussion of Connecticut's Validating Act and a recent Vermont Supreme Court Case involving a tax sale, followed by considerations for insuring titles with tax sales in their chain. We've also highlighted the relevant statutes in other New England states involving tax sales. We conclude with some information on an upcoming Continuing Legal Education Seminar on Vermont's Title Standards.



### **Connecticut Validating Act - .....we all make mistakes!**

Prior to 1997, there was a biennial adoption of a Special Validating Act setting forth various "fixes" for conveyances that had technical or procedural mistakes affecting marketability of title, but which did not create substantive rights where none existed before. The acts, when adopted, generally became effective upon passage and operated retroactively in that their curative effect relates to instruments recorded prior to the date of act, i.e., Spec. Act 99-7 adopted June 3, 1999 validated instruments recorded prior to Jan. 1, 1999. There were some changes over the years in these acts, and where one act would have corrected a defect but in a later one the defect was not cured, the later enactment prevailed. See *Greene v. Greene* 2001 Conn. Super. Ct. LEXIS 1160.

Effective July 1, 2000 Conn. Gen. Statute 47-36aa was enacted. The statute created a permanent Validating Act covering numerous conveyancing defects and its impact is extremely helpful for the practitioner and title insurers. The saving provisions of the Validating Act generally provide that they validate an instrument with the enumerated defect provided it has been recorded for at least two years with no action challenging the same. There are some exceptions and certain defects have a longer cure or waiting period.

Of particular application for common defects are the following sections:

a. CGS 47-36aa:

(a) Conveyancing Defects: (1 and 2) - the instrument in question contains a defective acknowledgement or no acknowledgement or one witness only or no witness, will be

validated if not challenged within two years after recording.

(c) Defect with respect to a power of attorney - (2) an instrument is executed pursuant to a power of attorney but the power of attorney is not recorded in the land records where the instrument is recorded, will be validated if not challenged, fifteen (15) years after recording.

(d) Defect with respect to a conveyance where a fiduciary conveyed to themselves (self-dealing), will be validated if not challenged, ten (10) years after date of recording. It is important to note, however, that this situation may be cured earlier per Connecticut Standards of Title 6.5 if record evidence of the fiduciary's authority to self-deal is apparent.

A separate validating statute was adopted in 2016 and codified as CGS 47-36bb relating to transfers into a trust rather than a trustee of a trust, as previously a trust was deemed an entity not capable of holding title.

The Validating Act is worthy of review when a title search reveals any type of defect that could possibly be cured by a section of the Act. To view the statute in its entirety, please follow this link: [https://www.cga.ct.gov/current/pub/chap\\_821b.htm](https://www.cga.ct.gov/current/pub/chap_821b.htm)



## **Vermont Tax Sales**

In February of this year, the Vermont Supreme Court validated a municipal tax sale where the address on the notice of sale was misspelled and the taxpayer claimed the error, along with other defects, resulted in constitutionally inadequate notice. The details of this decision are set forth below followed by requirements for underwriting tax sale transactions in Vermont.

*Contos v. Town of Londonderry & Superchi, 22-AP-240 (February, 2023).*

Emanuel Contos (hereafter "Contos") purchased real estate in the Town of Londonderry, Vermont (hereafter "Town") in 1992. Contos, an out-of-state homeowner, resided at "879 Neipsic Road, Glastonbury, CT", although the Town's records listed his address as "879 Niepsic Road, Glastonbury, CT". Since at least 2012, the erroneous spelling was used by the Town in its official records and mailings to Contos, who admitted to receiving correspondence from the Town, including tax bills and delinquent tax collector notices.

In March, 2018 the Town's delinquent tax collector extended a levy and warrant against Contos' Vermont property and scheduled a tax sale for May 11, 2018. A notice of the sale was published in a local publication for three consecutive weeks in April, 2018, and on April 4, 2018 the Town sent a notice of tax sale by certified mail to Contos, using the misspelled address. On May 2nd the Town sent a second notice to Contos by first class mail, again using the misspelled address. On May 7th, the certified notice was returned as "return to sender, unclaimed, unable to forward".

At the tax sale, Superchi purchased the property for \$8,288.85 and the Town issued a Tax Deed on May 21, 2019, after the statutory redemption period had expired.

In November, 2019 Contos filed a Complaint against the Town and Superchi to invalidate the tax sale based upon claims that his due process rights were violated because of the address misspelling and his claim that the timing of the notices did not comply with Vermont's statutory requirements. The Town defended its compliance and argued that Contos' claim was time-barred because it was filed more than one year after the initial levy and warrant was issued.

The lower court granted Summary Judgment in favor of the Town and Contos appealed.

The Supreme Court first examined whether Contos' claim is time-barred under the one-year statute of limitations. Both parties agreed that the limitations period is one year but disagreed as to the event that would trigger its running. Contos argued that the limitations period did not commence until he received "actual" notice of the sale in May, 2019, while the Town's position was that the issuance of the levy and warrant in March, 2018 was the triggering event since the lawsuit challenged the tax collector's acts, including the sale. The Court agreed with the Town, citing the plain language of 32 VSA Section 5295(3), which measures the one-year period from the date that the warrant/levy was first issued.

Notwithstanding the Court's determination that Contos' claim was time-barred, if he was not afforded adequate due-process, the statute of limitations defense is inapplicable. Accordingly, the Court next examined Contos' due process claims.

The Court found no defect of "jurisdictional magnitude" that the Town sent an additional first class notice to Contos prior to receiving the "undelivered" receipt of certified mail. Instead, the Court found that to be "reasonable" since a previous certified notice (from a prior tax delinquency) had also been returned unclaimed. As to the "typo" in Contos' mailing address, the Court minimized the impact stating, "...nothing on the returned envelope indicated that the mail was undeliverable because the address did not exist or was unknown", and that there is "...no showing that the misspelling caused the notice to be misdelivered."

Finally, as to the timing of the notices, the Court found no defect in the Town's actions, holding, that "...there is no specific time limit" for the additional notice, but that it must be "...reasonably calculated, under all circumstances, to apprise interested parties of the pendency of an action and afford them an opportunity to present their objections." The Court concluded that the steps the Town took to provide notice "substantially complied" with Contos' due process rights and affirmed the decision of the lower court.

The full text of this decision can be viewed here:

<https://www.vermontjudiciary.org/sites/default/files/documents/eo22-240.pdf>

While the tax sale in this case was validated by the three-justice panel of the Vermont Supreme Court, tax sales in a chain of title do pose extra hazardous risks for title insurers and are therefore underwritten with caution, and approval by local underwriting counsel is required. It is important to know the tax sale requirements in your jurisdiction in order to assess any potential risks that the conveyance is vulnerable to being invalidated by a Court. In addition, in jurisdictions such as Vermont, where the tax sales are administrative, or non-judicial, there is an even greater risk that the sale could be challenged.

Below are Vermont's tax sale requirements and underwriting guidelines for transactions involving property conveyed by tax sale in the chain of title.

### **Vermont Tax Sales (Non-judicial)**

Title 32, Chapter 133, Subchapter 9.

<https://legislature.vermont.gov/statutes/chapter/32/133>

In Vermont, a tax collector must:

1. File and record a Levy and Warrant in the Land Records showing the taxes owed and a description of the property subject to the delinquent tax;
2. Advertise the land for sale at public auction in the municipality where property is located for three successive weeks in a newspaper circulating in the vicinity, with the last publication at least 10 days prior to the date of the sale;
3. Provide the delinquent taxpayer written notice by certified mail (requiring return receipt) to the last known address of the taxpayer. Information in this notice must include the date and place of sale and the notice must be provided at least 10 days prior to the sale for resident property-owners and 20 days prior to the sale for non-resident property owners. If notice by certified mail is returned unclaimed, notice shall be re-sent by first-class mail or personal service in accordance with Rule 4 of the Vermont Rules of Civil Procedure. The form of the advertisement/notice must be substantially in the form set forth in 32 VSA Section 5253.
4. Provide mortgagees or other lien-holders written notice by certified mail (requiring return receipt) to the last known address of that entity or individual at least 10 days prior to the sale for resident property-owners and 20 days prior to the sale for non-resident property owners. Notice may be given to the agent or attorney of the mortgagee or lien-holder.
5. Post a notice of the sale in some public place in the town;
6. Hold the public auction at the exact time/place set forth in the advertisement and notice;
7. Following the sale, execute a Report of Sale, in accordance with the form set forth in 32 VSA Section 5255, setting forth the details of the tax sale;
8. Confirm that the one-year redemption period from the date of sale, as provided by 32 VSA Section 5260, has expired without redemption by the delinquent taxpayer;
9. Properly execute and record a Tax Collector's Deed to the high bidder at the public auction.

### **Underwriting Requirements in Vermont:**

When underwriting transactions in Vermont involving a property that has been conveyed via tax sale within the previous fifteen (15) years from the date of the present transaction, Stewart requires that the delinquent taxpayer release their interest in the subject property via quit claim deed or that the tax sale be confirmed by the Judiciary via a quiet title action. The fifteen-year period corresponds with the State's adverse possession laws. The following language may be used in the Commitment, Schedule B:

The Company requires for its review:

- (a) quit claim deed from the Taxpayer to the Purchaser/Owner releasing all interest in the subject property;

- (b) discharge or release of lien from all lienholders of record, if any;
- (c) quiet title final judgment extinguishing the interests of the Taxpayer and all lienholders of record, if any, together with all proofs of service supporting this court action;
- (d) certification acceptable to the Company confirming compliance with all applicable Vermont laws and due process requirements relating to the tax sale.

Following the production and review of these documents, the Company may make additional requirements or exceptions.

When underwriting transactions in Vermont involving a property that has been conveyed via tax sale more than fifteen (15) years from the date of the present transaction, Stewart requires:

- (a) Underwriter approval, which may be withheld based on a case-by-case assessment of the available information and circumstances surrounding the tax sale.
- (b) Certification acceptable to the Company confirming compliance with all applicable Vermont laws and due process requirements relating to the tax sale;
- (c) An Owner/Seller Affidavit that provides that the property has been occupied by that owner for more than 15 years since the tax sale;
- (d) Evidence that all outstanding liens that survived the tax sale have been discharged or are no longer enforceable;
- (e) Confirmation that there are no pending claims by any party as to the validity of the Tax Sale.

With respect to tax sales in other New England jurisdictions, the following is a brief overview of the tax sale process in each state and a link to applicable statutes. If you are being asked to insure title land which was derived from a tax sale, please contact your state underwriter for requirements prior to insuring.



### **Maine Tax Sales**

36 M.R.S.A. § 646-B. <https://legislature.maine.gov/statutes/36/title36sec942.html>

Maine's tax lien foreclosure process is governed 36 M.R.S.A. § 646-B. It provides for the automatic (non-judicial) vesting of property in municipalities after the giving of notice, recording of a lien certificate, and passage of requisite amount of time.



### **Massachusetts Tax Sales**

MGL c. 60: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIX/Chapter60>

In Massachusetts a municipality can “sell” property by way of a collector’s deed, which essentially is the equivalent of a lien, without judicial involvement; however, in order to foreclose the taxpayer’s right to redeem the property a tax title foreclosure must be done in the Land Court. The only exception is for so-called lands of low value as certified by the DOR. See MGL c. 60, s. 79.

In Tallage Lincoln, LLC v. Williams, 485 Mass. 449 (2020) the SJC issued a decision in a tax title case that contains an appendix which lays out the tax collection, tax taking, and sale procedure in detail. That decision can be found here:

<http://masscases.com/cases/sjc/485/485mass449.html>



## **New Hampshire Tax Sales**

Title V: TAXATION, Chapter 80 COLLECTION OF TAXES

<https://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-V-80.htm>

Tax sales in New Hampshire are non-judicial. NH has both a tax sale and tax lien process. The method used is dependent upon the collection process adopted by the municipality. Both methods require strict adherence to statutory form, notice and timing provisions.



## **Rhode Island Tax Sales**

R.I.G.L. sections 44-9-1 through 44-9-56.

<http://webserver.rilin.state.ri.us/Statutes/TITLE44/44-9/INDEX.HTM>

In Rhode Island, the tax sale itself is non-judicial. The buyer must wait one year and must then bring a “Petition for foreclosure of redemption” in Superior Court.

If the successful bidder is Rhode Island Housing and Mortgage Finance Corporation, the petition can’t be filed until 5 years after the sale.



## **Connecticut Tax Sales**

CGS 12-157: [https://www.cga.ct.gov/current/pub/chap\\_204.htm#sec\\_12-157](https://www.cga.ct.gov/current/pub/chap_204.htm#sec_12-157)

Connecticut has judicial and non-judicial tax foreclosures; however, the non-judicial sales are difficult due to Standards of Title requirements and the fact that they are uninsurable until the deed is on record for at least a year and then, provided certain requirements have been met. See Connecticut Standard of Title 29.1.

For more information on Tax Sales generally, Stewart's Underwriting Manual offers some excellent information that can be viewed here:

[https://www.virtualunderwriter.com/en/underwriting-manuals/2005-11/UM00000232.html#SubTopics\\_6](https://www.virtualunderwriter.com/en/underwriting-manuals/2005-11/UM00000232.html#SubTopics_6)



### 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: <https://www.vtbar.org/event-calendar/>



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