

Proposed New Standard of Title: Creation, Scope and Duration of the Connecticut Estate Tax Lien

By ELLEN L. SOSTMAN

The Standards of Title Committee has adopted a proposed new Standard 23.2, addressing the Connecticut estate tax, which replaced the Connecticut succession tax for estates of decedents dying on or after January 1, 2005. If approved, this new standard will become part of Chapter 23, which presently addresses only the Connecticut succession tax. In accordance with the requirements of the CBA bylaws establishing the protocol for the adoption of new standards, what follows is a brief synopsis of the proposed new Standard 23.2.

THE CONNECTICUT ESTATE TAX

PROPOSED STANDARD 23.2 Creation, Scope and Duration of the Connecticut Estate Tax Lien.

A. For decedents dying on and after January 1, 2005, the Connecticut Estate Tax Lien arises immediately upon death and without notice and attaches to all real property included in the gross estate of the decedent locate in Connecticut, in the amount ultimately determined to be due, including interest and penalties. The lien continues in favor of the State of Connecticut from the date of death until paid.

B. Title to real property that is subject to such inchoate lien is unmarketable until (i) a release of lien is recorded in the land records of the town where the property is located or (ii) either full payment of any tax due or the fact that no tax is due can be determined or established from other public records and made a part of the record title of the real property, in accordance with the procedure set forth in Comment 3.

Following the above headnotes are five paragraphs of comments that expand on the specifics of the Connecticut estate tax lien as set forth in the headnotes. Comment 1 addresses the provisions of CGS Section 12-391, including the fact that the Connecticut estate tax lien, like the federal estate tax lien on which it is based, arises automatically at death, secures the amount of any tax due including interest and penalties against the Connecticut real property of the decedent, whether resident or non-resident, and may remain inchoate for its duration. Comment 1 also includes a discussion of the types of real property interests which can give rise to and be affected by the estate tax lien.

Comment 2 addresses the provisions of CGS Section 12-392, which defines what a taxable estate is, based on the date of death and the value of the taxable estate, and specifies where the Connecticut estate tax return is to be filed. Estate tax returns that fall below the statutory threshold for taxability set out in Section 12-392 must be filed with the probate court having jurisdiction over the estate of the decedent. Estate tax returns for an estate that meets or exceeds the threshold for taxability must be filed with the commissioner of revenue services. Section 12-392 requires the probate court, in the case of a non-taxable estate, to issue an Opinion of No Tax Due and a release of lien, and requires the State of Connecticut to issue a release of lien, in the case of a taxable estate, when all taxes together with interest and penalties have been paid.

Comment 3 sets out what documents may be recorded in the land records to clear the inchoate estate tax lien from the title to the real property owned by the

decedent at death or affected by an interest held by the decedent at death, in order to make that title marketable. Those documents include the release issued by the probate court or the State of Connecticut, the probate court's Opinion of No Tax Due, or, under certain circumstances set out in Comment 3, an affidavit attaching evidence of the termination or non-existence of the estate tax lien.

Comment 4 points out CGS Section 12-398, which provides that the lien for the Connecticut estate tax remains a lien from the date of death until paid.

Comment 5 provides that, notwithstanding the provisions of Section 12-398, under the definition of marketability of title established by Standard 1.1, a title that has no recorded evidence of a release of the inchoate lien may be considered to be marketable based solely on the passage of time which diminishes the probability of loss or litigation due to the lien.

After a 60-day comment period established by the CBA bylaws, which begins to run on the date of publication of this article, the committee will consider any comments received and will make whatever changes to the proposed standard it deems appropriate. Proposed Standard 23.2 will then be submitted to the Board of Governors for final approval. A complete copy of Standard 23.2 is available from the CBA. Any comments should be submitted to the committee chair, Ellen L. Sostman, by email to eslaramie15@gmail.com. ■

Ellen L. Sostman is a retired senior title counsel at Connecticut Attorneys Title Insurance Company, a member of the CBA's Real Property Section's Executive Committee, and chair of the Standards of Title Committee.