

Standards of Title Committee Drafts Second Proposed Standard on Connecticut Estate Tax Liens

By ELLEN L. SOSTMAN

The Special Committee on Standards of Title has drafted and approved the second of two new proposed standards on the Connecticut Estate Tax Lien. An article on the first of these standards, Proposed Standard 23.2, was published in the January/February 2022 edition of *CT Lawyer*. Proposed Standard 23.2 will now be submitted to the Board of Governors for its approval.

Here is the second proposed new standard in its entirety:

PROPOSED

STANDARD 23.3

Protection of Certain Persons Against the Connecticut Estate Tax Lien Until Notice Thereof Has Been Recorded in the Town Clerk's Office.

The estate tax lien arising at the date of death under Chapter 271 of the Connecticut General Statutes for decedents dying on or after January 1, 2005 is not valid against certain persons identified in Sec. 12-398(d). These protected persons include lienors, mortgagees, judgment creditors and bona fide purchasers who acquire a lien on or interest in the real property prior to the recording of a certificate of estate tax lien in the land records of the town in which the real property is located.

Comment 1. Although the Connecticut estate tax is based on the federal estate tax in many respects, the Connecticut statutes pertaining to

the estate tax lien do not mirror the language of the federal statutes in all respects, especially with regard to protected parties. 26 USC Sec. 6324(c)(1) protects from the federal estate tax lien, whether inchoate or recorded, only certain types of creditors and liens as set forth in 26 USC Sec. 6323(b). See Standard 25.3 for discussion. Section 12-398(d) renders the Connecticut estate tax lien **invalid** against “any lienor, mortgagee or judgment creditor” until notice of the lien is filed or recorded in the town clerk’s office. Thus, any lienor, mortgagee or judgment creditor who acquires its interest in the property while the estate tax lien is inchoate takes priority over such lien, whether or not it may have knowledge of the existence of such tax lien. There is no statutory requirement that such person or entity be bona fide and without notice.

Comment 2. As to purchasers, however, the state law differs in language from the federal law. 26 USC Sec. 6323(b) protects “any purchaser” of property until notice of the lien is recorded. Section 12-398(d) protects only a “bona fide purchaser”. While this is not a defined term under the state estate tax statutes, the definition afforded by Connecticut case law is a purchaser who gives valuable consideration without notice or knowledge, actual or constructive, of a claim by a third party. See Comments 2, 3 and 4 to Standard 2.7. Inasmuch as all persons are deemed to have

constructive notice of recorded title documents, where the record chain of title reveals that such title passed out of a decedent’s estate or from an heir or devisee of a decedent, it is impossible to conclude that one purchasing such title to real property can be a bona fide purchaser, unaware of the existence of an inchoate estate tax lien. Therefore, the Committee concludes that, for such a title to be marketable in the hands of a purchaser, a release of the estate tax lien or other documentation as set out in Standard 23.2 must always be obtained and recorded, regardless of whether or not the lien itself is of record.

Following the publication of this article, there will be a 60-day comment period, during which any interested party is invited to submit comments on Proposed Standard 23.3. Any such comments can be emailed to the committee chair at eslaramie15@gmail.com or to any other member of the Standards Committee. A list of the Committee members and their contact information may be found on the Real Property Section’s page on the CBA website. The committee will review all comments and make any revisions it deems appropriate, and will then present Proposed Standard 23.3 to the Board of Governors for final approval and inclusion in the *Connecticut Standards of Title*. ■

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.