



## Perfecting Security Interests with the UCC-1 Financing Statement

*Carol Beckwith*

Commercial transactions raise unique questions and issues. In our first in a series on commercial transaction articles, we will look at the UCC Financing Statement so common to this arena.

In order to grant a loan, a lender in a commercial transaction may accept a variety of personal property to be used as security. This collateral may be comprised of tangible personal property, such as equipment or fixtures located at a particular site, customer lists, inventory, or business records, or intangible consideration such as goodwill, trademarks, trade names, patents or contract rights. Under C.G.S. §42a-9-101, *et seq.*, the lender may require the filing of liens to perfect these security interests. Filing the liens with the Secretary of State's office fulfills a dual purpose: it secures the liens and thereby protects the holder of the security interest and secondly, provides notice to the public that the security interest exists.

Perfecting these security interests is accomplished by using the UCC-1 Financing Statement. The cost is \$25.00 per filing and once filed, you will receive a report from the Secretary of State's office that confirms the filing. After receipt of the report, a good practice is to then conduct a UCC-1 search at the Secretary of State's office. Enter the debtor's name (either individual or organization/entity) exactly as it appears on the UCC-1 Financing Statement, complete the remainder of the form in accordance with its instructions and forward the request form to the Secretary of State's office along with the \$25.00 search fee. The Secretary of State will then conduct a search of all filings of record for that debtor and will mail a report to you. With this report, you will be able to confirm that your UCC-1 Financing Statement was properly filed.

Both the UCC-1 Financing Statement, as well as the UCC Information Request form can be downloaded and printed from the Secretary of State's website at [www.sots.state.ct.us](http://www.sots.state.ct.us).

## PLEASE RELEASE ME!



### The Challenge Surrounding Unreleased Mortgages

*Nancy McCrann*

This is the first in a series of articles concerning the ongoing problem of unreleased or improperly released mortgages. We shall address those questions most frequently asked of CATIC's Legal Staff.

Mortgages are considered conveyances of title in the State of Connecticut; therefore, the Release of Mortgage should be executed in the same manner as a Mortgage Deed. A Statutory Form of Release can be found in C.G.S. §49-9. Because it is the seller's contractual obligation to give marketable title at closing, it is the seller's attorney who is responsible for obtaining the properly executed Release for recording.

An effective Release shall conform to the following:

- a) It shall be executed by the proper party;
- b) It shall correctly identify the mortgage being released;
- c) It shall be executed in accordance with the laws of the state where it is signed;
- d) It shall reflect the public ownership record of the mortgage.

Effective July 1, 2004, Public Act 04-67 validates those Releases of Mortgage executed by a party other than the mortgage holder of record. This validation is effective if the Release has been of record for at least five (5) years and during this period, no entity has commenced an action to challenge the Release's validity and/or filed a Notice of Lis Pendens on the land records. This act also requires that the record owner of the property record an affidavit stating the following:

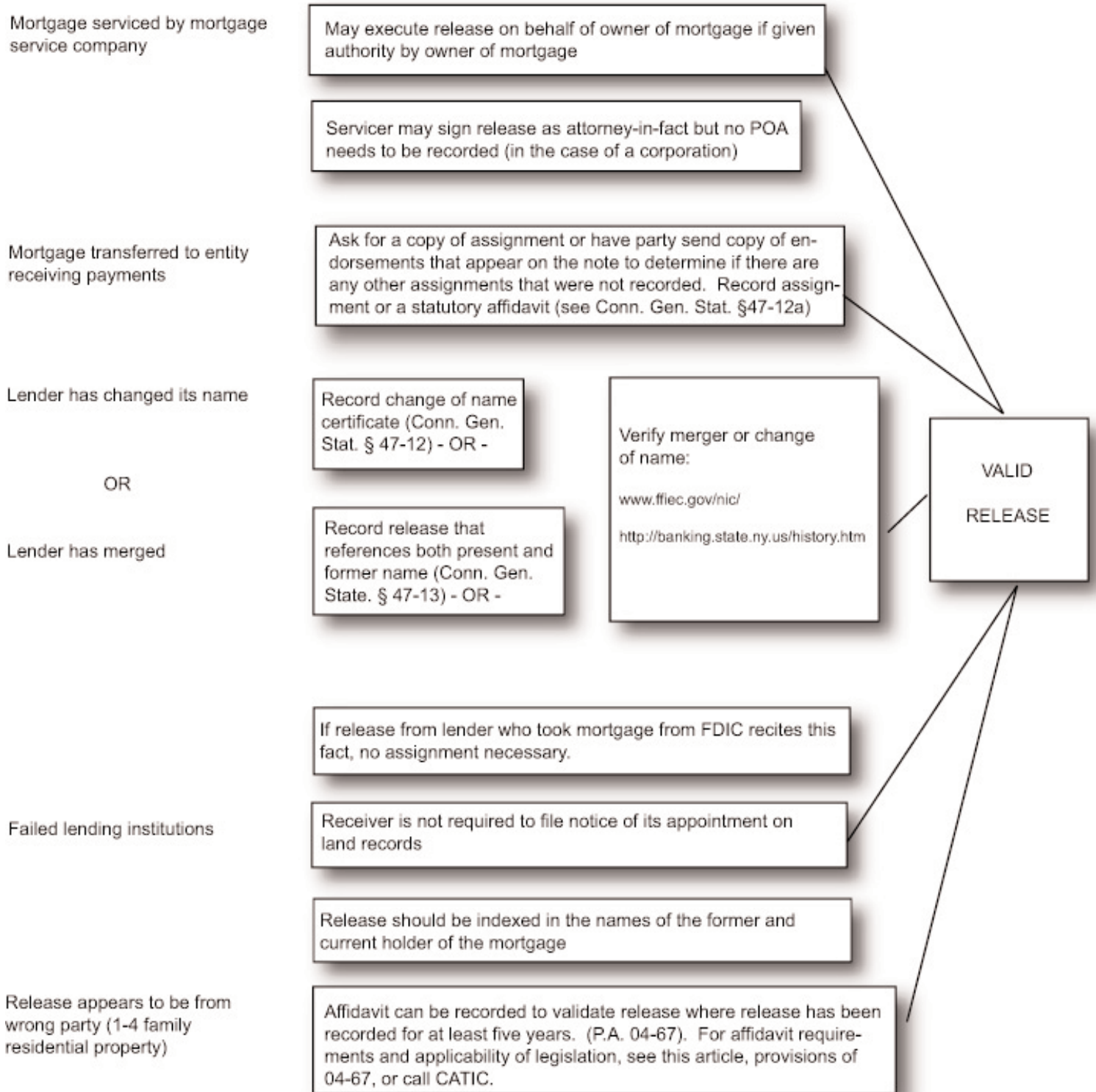
1. The affiant has been the record owner of the property described in the mortgage for at least two (2) years prior to the date of the affidavit;
2. The recording information for the mortgage, as well as any subsequent assignments and the recording information of the Release in question;

*(continued on next page)*

3. The affiant has received no demand for payment of all or any portion of the debt secured by said mortgage since the date Release recorded, and has received no notice or communication that would indicate that all or any portion of the mortgage debt remains due and payable;
4. To the best of the affiant's knowledge and belief, the mortgage has been paid in full.

The act does not validate any Release obtained by forgery or fraud and pertains only to those Releases executed by parties other than individuals. The subject property must be one-to-four family residential property.

Sometimes it may be difficult to determine whether your Release meets these requirements and is therefore effective. The following chart may assist you in making a determination:



## The Power Vested: Powers of Attorney

**A Power of Attorney is a** written instrument, certified by a Notary Public, which designates a person or party as an agent empowered to act for another person (principal) in a legal capacity. A general power of attorney authorizes said agent to act on behalf of the principal or signer in any legal circumstance. A special power of attorney specifies and restricts the agent's powers, such as in the case of a real estate closing. A power of attorney is revocable under normal circumstances and becomes void on the death of the principal.

There are several considerations necessary when using a Power of Attorney:

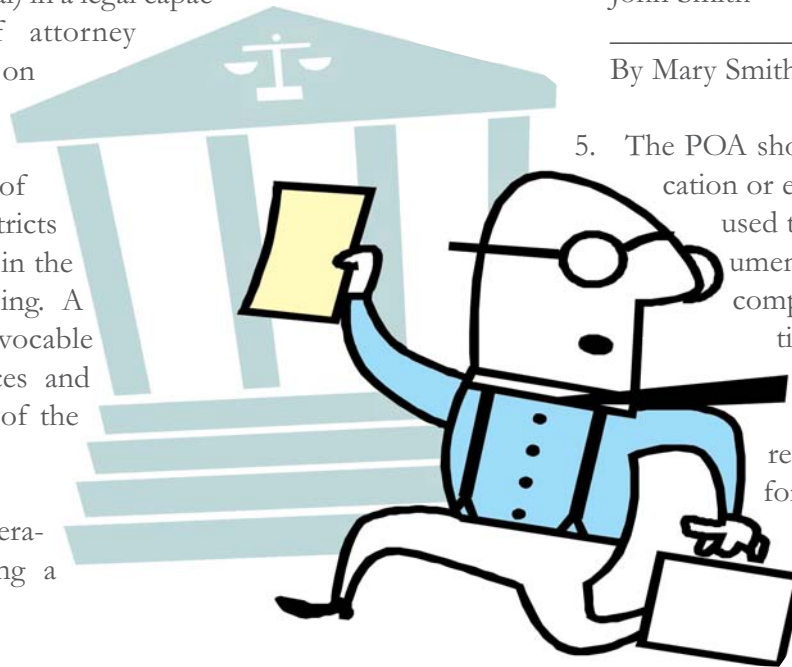
1. The POA may be used only for a natural person as opposed to an entity such as a corporation or LLC;
2. The POA must be recorded simultaneously with a deed of conveyance or mortgage when either of those documents has been executed under its authority;
3. The POA should be recited with the deed, for example:

I, John Smith, of the Town of Rocky Hill, County of Hartford and State of Connecticut, acting herein by Mary Smith, my attorney-in-fact, under a Power of Attorney dated June 23, 2004 and recorded simultaneously herewith in the Rocky Hill Land Records...

4. The deed should be executed in accordance with C.G.S. §47-5, i.e.

John Smith

By Mary Smith, his Attorney-in-Fact



5. The POA should be verified for revocation or expiration. If the POA is used to execute mortgage documents, the signature must comply with lender instructions;

6. The POA should recite its specific purpose, for example:

*"specifically in connection with the sale of 128 Main Street, Rocky Hill, Connecticut, on or about June 23, 2004, including the execution of any and all documents necessary to consummate said sale.;*

7. The POA may also include a termination date, i.e. *"This power of attorney shall terminate at midnight on June 24, 2004, Eastern Standard Time."*

A Power of Attorney specifically designated for purposes of transferring real property should include banking powers in the event the attorney-in-fact shall accept checks on the principal's behalf.

Tracy Pandolfo

## ....More of what we do best...

Keeping abreast of trends and changes in the real estate profession is essential to operating a successful practice. In an ongoing effort to provide our members with a “one-stop-shopping” resource for their continuing education needs, we offer the following:

### For April:

**Common Interest Communities: Analysis and Problem Resolution** - Learn about common errors contained in filed Declarations and methods for correcting these problems, in order to ensure marketable title for your clients.

The next in our series of programs on commercial transactions encompasses **Due Diligence** and will include presentations by Guy R. DeFrances, Jr., Esq., Associate General Counsel for CATIC®, and David R. Glissman, Esq., a partner with the firm of MacDermid, Reynolds & Glissman. Other speakers at the program include a local surveyor and a commercial property inspector.

### For May:

For those real estate professionals new to the field, or returning from a hiatus and in need of a “gentle reminder,” **Real Property Pursuit** is slated for May. This four (4) week practicum offers an overview of the closing process, from contract inception through preparation of HUD-1 Settlement Statements and title insurance policies. Adjustment calculation methods are taught with an eye to adherence to RESPA requirements. The program also includes a demonstration of PrepExpress®, the CATIC® software program which facilitates preparation of these Settlement Statements and related title policies.

Learn what constitutes “marketable title” in our **Marketability** seminar. This presentation will also cover common problems which render title unmarketable and provide guidance on correcting these problems.

The commercial seminar series for 2005 concludes with an overview of **Environmental Issues Affecting Commercial Property**, presented by John E. Wertam, Esq., a partner at the Hartford firm of Shipman & Goodwin.

These programs are designed with both the attorney and paralegal in mind. You can access further details and/or register for any of these offerings by visiting our website at [www.catic-e.com](http://www.catic-e.com). We welcome your suggestions for future seminars. Please submit your ideas to [MemberServices@catic-e.com](mailto:MemberServices@catic-e.com).