

Dear Stewart Partners,

We hope that all of you enjoyed the long weekend with family and friends. Fall in New England is a beautiful time of year.

In this week's update we are providing you with highlights to the changes in the Massachusetts homestead law. We've received various inquiries over the past few weeks about the amendments to the statute and want to share with you some of the key changes of the amended law. In addition, we are highlighting a decision in a case involving wire fraud and claims for negligence against a bank. The case was brought in the U.S. District Court in Massachusetts, and although it doesn't involve real estate, it presents an excellent analysis as to why a bank may not be liable for any loss even when it should have known that it was being used to facilitate wire fraud. The case is an important reminder of the difficulty victims of wire fraud face when attempting to recover lost funds.

Lastly, we've included information for upcoming national webinars hosted by Stewart's Agency division. Read below for the details and sign-up links for the upcoming education.



Amendments to the Massachusetts Homestead Law – Chapter 75 of the Acts of 2022

In August the Governor signed into law an amendment to the Massachusetts homestead statute which goes into effect on November 9, 2022. The key highlights of the changes include an expansion of the group of persons who are entitled to claim homestead protection, as well as additional ways that one can terminate a homestead. The amendments regarding termination are particularly important to the conveyancing attorney as it is now easier to establish of record that the property isn't encumbered by an automatic homestead right of a non-titled spouse. The law now allows third parties to rely conclusively on certain representations made in the deed of conveyance. It is important to note, however, that some of these representations must be made under the penalties of perjury. Below we've highlighted some of the new provisions of the amended law.

* Additional persons can claim homestead rights:

Added "remaindermen" to the group of people entitled to both an automatic and declared homestead if the property is the principal residence of the remainderman.

Added lessee-shareholders of residential co-ops to the list of people entitled to both an automatic and declared homestead.

* Additional methods to terminate and/or release homestead rights:

Good faith purchaser for value may rely upon the following language in a deed to terminate homestead rights of grantor and grantor's spouse, if any:

1. deed containing recitation that grantor is unmarried

2. deed containing recitation that the property is not a home
3. deed containing recitation that the property is not the grantor's home
4. deed containing statement **certified under penalties of perjury** that there is no spouse or former spouse entitled to an estate of homestead
5. deed containing statement **certified under penalties of perjury** that property is not the home of grantor's spouse or former spouse

* Homestead rights after a divorce:

If a divorce judgment requires spouse A to convey property to spouse B, the homestead rights of spouse A in the property are automatically released.

If a spouse in a divorce was not an owner of a home and was not awarded title or possessory rights, the homestead rights of that spouse are released by virtue of the judgment.



Case Summary – Bud's Goods & Provisions Corp. v. HSBC Bank USA, N.A. (2022 U.S. Dist. LEXIS 172352, 2022 WL 4451194)

This decision comes out of the United States District Court of Massachusetts and deals with claims in a wire fraud scheme against Defendants John Doe (the fraudster), Merton (the account holder), and HSBC Bank USA (the beneficiary bank). It highlights that a beneficiary bank is not liable even if it should have known that it was being used to facilitate wire fraud.

The CEO of Plaintiff Bud's Goods & Provisions Corp. sent e-mail communications to one of its vendors, Holland, who used the e-mail address "mike.holland@thehollandcompanies.com." Unbeknownst to the CEO, his email had been hacked by a fraudster (John Doe), who was monitoring messages. The fraudster posed as the vendor by using a similar e-mail address by adding an "s" at the end of theholland and before companies: "mike.holland@thehollandscompanies.com."

When Bud's CEO requested wiring instructions from the real Holland, John Doe intercepted that e-mail and responded using the fake e-mail address with wiring instructions to misdirect the funds from Holland. Unaware of the difference in the e-mail addresses, and never having received Holland's e-mail with the correct wiring instructions because it was intercepted by the fraudster, Bud's wired \$459,153.06.

The wiring instructions sent by the fraudster identified the account holder as Merton (and not Holland) – a significant red flag. When Bud's sent the wire, it included a note in the memo that the payment was intended to satisfy "M. Holland and Son's Construction Inc...Invoice #3620." Bud's alleged that based on the notation, HSBC knew or should have known that the wire transfer was not reasonably associated with Merton, a resident of Hong Kong. The Court disagreed and granted HSBC's motion to dismiss.

Wire transfers are governed by Article 4A of the Uniform Commercial Code (UCC) which also precludes any common law claims arising from wire transfers that would impose liability inconsistent with the rights and liabilities expressly created by Article 4A. Here, Bud's authorized the wire transfer (even if it was mistakenly), and because the name on the payment order matched the name on the account, Article 4A did not require HSBC to act further. The Court found the notation of intent to satisfy payment to Holland to be "gratuitous" and did not play a role in the process of payment.

The Court also concluded that Bud's failed to state plausible common law claims of negligence, aiding and abetting fraud, and conversion. The negligence claim failed because Bud's is not a customer of HSBC, and therefore HSBC owed it no duty of care. Aiding and abetting a fraud requires actual knowledge of the fraudulent purposes, which Bud's did not establish. Although the Merton account was regularly being used to deposit funds which were immediately transferred to a bank specializing in

cryptocurrency, that alone was not enough to show actual knowledge of fraud by the Bank. Lastly, the conversion claim required a showing that HSBC exercised unauthorized domain over the funds, but in fact the bank did the opposite. HSBC handled the funds in accordance with the payment order from Bud's.

The case emphasizes the dangers of wire fraud, and the difficulty of recovering the funds. While the difference in the email address used by the fraudster may not have been noticeable to the untrained eye, the use of a different name on the recipient account was a significant red flag. This case underscores the necessity of using a known telephone number to confirm wiring instructions before sending money. This situation would likely have been avoided if the CEO had telephoned the vendor prior to sending funds.



October National Agency Webinars

Topic: Latest Best Practices for Your Payoff Verifications

Wire fraud is a critical issue facing the title industry. As your underwriter, protecting your transfers is a top priority. That's why Stewart partners with CertifID.

Join either of the one-hour sessions to learn how CertifID's new PayoffProtect solution can simplify your mortgage payoff verification process, and help you achieve 95%+ validation success rates in just 2 minutes.

Matt Kilmartin, VP of Sales at CertifID, will cover the challenges faced in verifying payoffs, how the PayoffProtect validation software engine works, recent fraud detected and prevented with this tool, and much more.

Date: October 18, 2022 at 12:00PM or October 19, 2022 at 2:00PM

To register for **October 18th** Session: [Click here to register](#) for this webinar. You will receive a You're Registered email from Microsoft Teams which will include your link to join this event.

Click on the attachment in the You're Registered email to add this webinar to your calendar.

To register for the **October 19th** Session: [Click here to register](#) for this webinar. You will receive a You're Registered email from Microsoft Teams which will include your link to join this event.

Click on the attachment in the You're Registered email to add this webinar to your calendar.

Topic: Navigating Stewart's Virtual Underwriter and Special Alert Database

Join Stewart for a one-hour webinar focusing on how to navigate through the Virtual Underwriter website and how to utilize the Special Alerts database.

Learn more about the features and benefits offered through this easy to use, award-winning program, including, searching for bulletins, state real estate practice guides, locating standard exceptions, using the underwriting manual, guidance on special alerts, and much more!

Date: October 20, 2022 at 12:00 PM

To register for this webinar: [Click here to register](#) for this webinar. You will receive a You're Registered email from Microsoft Teams which will include your link to join this event.

Click on the attachment in the You're Registered email to add this webinar to your calendar.

For questions about either of these education offerings, please contact Gloria Prinz, Agency Training Manager at gprinz@stewart.com

200 5th Avenue, Suite 301, Waltham, MA 02451

Phone: 800-628-2988 Fax: 781-697-3336

Tiziano Doto, MA & RI Agency Services Manager - tiziano.doto@stewart.com

Jutta R. Deeney, VP, New England Regional Underwriting Counsel - jutta.deeney@stewart.com

Christine Provost, MA Associate Senior Underwriting Counsel - christine.provost@stewart.com

Tracie Kester, MA Underwriting Counsel - tracie.kester@stewart.com

Paula M. Cuculo, RI Underwriting Counsel - paula.cucoulo@stewart.com

Eileen O'Shaughnessy, RI Underwriting Counsel – eileen.oshaughnessy@stewart.com

General MA Underwriting Mailbox - massuwing@stewart.com

Tracy Hawkins, MA Agency Sales Representative Sr. - tracy.hawkins@stewart.com

Mary Blomerth, MA Agency Sales Representative Sr. - mary.blomerth@stewart.com

Laurie Goodwin, MA Agency Sales Representative - laurie.goodwin@stewart.com

Lyslie A. DeMeo, RI Agency Sales Representative Sr. - ldemeo@stewart.com

Michelle Radie-Coffin, NH Underwriting Counsel and State Manager - michelle.radiecoffin@stewart.com